

No. 15193

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United States  
Court of Appeals  
for the Ninth Circuit

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ROBBINS TIRE AND RUBBER COMPANY,  
INCORPORATED, a corporation,  
Appellant,

vs.

BAY RUBBER COMPANY, a limited copart-  
nership, EDWIN W. PAULEY, C. J. CAM-  
ERON, WESLEY H. DeSELLEM, JOHN  
B. CONDREY and PACIFIC RUBBER  
COMPANY, a corporation, Appellees.

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Transcript of Record

(In Two Volumes)

VOLUME I.

(Pages 1 to 408, Inclusive)

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Appeal from the United States District Court for the  
Northern District of California  
Southern Division

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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In the United States District Court for the North-  
ern District of California, Southern Division

No. 34294—Civil

ROBBINS TIRE AND RUBBER COMPANY  
INCORPORATED, a corporation, Plaintiff,

vs.

BAY RUBBER COMPANY, a limited copartner-  
ship, EDWIN W. PAULEY, C. L. CAME-  
RON, WESLEY H. DeSELLEM, JOHN B.  
CONDREY, PACIFIC RUBBER COM-  
PANY, a corporation, Defendants.

EXCERPT FROM DOCKET ENTRIES

1954

Dec. 14—Filed complaint—issued 2 summons.

\* \* \* \* \*

1955

Jan. 31—Filed answer of Bay Rubber Company.

Jan. 31—Filed answer of Edwin W. Pauley and  
C. L. Cameron.

Jan. 31—Filed answer of Pacific Rubber Com-  
pany.

Jan. 31—Filed answer of Wesley H. DeSellem  
and John B. Condrey.

\* \* \* \* \*

Aug. 3—Filed deposition of John B. Condrey.

Aug. 3—Filed deposition of Wesley H. DeSellem.

Aug. 12—Filed notice by plaintiff of motion to  
compel answers in discovery proceedings, Aug. 22,  
1956 with supporting affidavit.

\* \* \* \* \*

1955

Aug. 29—Ordered after hearing, motion to compel answers denied without prejudice to renewal at time of pre-trial. (Goodman.)

\* \* \* \* \*

Aug. 30—Filed order denying motion of plaintiff for order compelling answers without prejudice.

\* \* \* \* \*

Sept. 12—Ordered for trial December 14, 1955. (Harris.) \* \* \* \* \*

Nov. 22—Filed notice by defts. of taking deposition of Poncet Davis, Nov. 30, 1955.

\* \* \* \* \*

Dec. 2—Filed motion by plaintiff and Poncet Davis for motion to terminate deposition, December 12, 1955, with memo.

Dec. 5—Filed deposition of Poncet Davis.

Dec. 5—Filed deposition of John L. Connolly.

\* \* \* \* \*

Dec. 12—Ordered after hearing, motion for order terminating deposition of Poncet Davis granted. Other motions withdrawn and case continued to Dec. 16, 1955 for trial. (Carter.)

\* \* \* \* \*

Dec. 16—Ordered case assigned to Judge Hamlin for trial this date. (Carter.)

Dec. 16—Court trial. Motion of plaintiff to amend complaint granted. Motion to dismiss as to defendants Edwin Pauley, C. L. Cameron and Pacific Rubber Co. ordered submitted. Motions to dismiss as to Stockholders DeSellem and John Condrey submitted. Evidence and exhibits intro-

Dec. 16, 1955—(Cont.)

duced and further trial continued to Dec. 19, 1955 at 10 a.m. (Hamlin.)

Dec. 19—Further Court trial. Evidence and exhibits introduced. Defendant reserves right to make motion to strike at a later date and further trial continued to Dec. 20, 1955. (Hamlin.)

Dec. 20—Further Court trial. Evidence and exhibits introduced. Motion of defendants to strike from testimony of Poncet Davis granted and further trial continued to Dec. 21, 1955. (Hamlin.)

Dec. 21—Further Court trial. Evidence and exhibits introduced. Motion of defendants for dismissal of first and second causes of action submitted. Memos. to be filed by counsel before Jan. 4, 1956, \* \* \* and further trial continued to Jan. 4, 1956. (Hamlin.) \* \* \* \* \*

1956

Jan. 3—Filed amendments to answer of defendants, with order granting leave to amend. (Hamlin.) \* \* \* \* \*

Jan. 4—Further Court trial. Evidence and exhibits introduced and further trial continued to Jan. 5, 1956. (Hamlin.)

Jan. 5—Further Court trial. Evidence and exhibits introduced and further trial continued to Jan. 6, 1956. (Hamlin.)

Jan. 6—Further Court trial. Evidence and exhibits introduced, memos ordered filed 10-10-5 days and case continued to Feb. 3, 1956 for further trial. (Hamlin.)

\* \* \* \* \*

1956

Feb. 2—Filed stipulation & order re income tax returns.

\* \* \* \* \*

Mar. 2—Ordered after arguments case submitted. (Hamlin.)

Mar. 20—Filed order for judgment for defendants. Counsel to prepare findings, conclusions and judgment. Findings & Conclusions to contain specific items as set out.

\* \* \* \* \*

Mar. 29—Filed reporter's transcript of proceedings March 2, 1956.

Apr. 10—Lodged judgment by deft.

Apr. 10—Lodged findings and conclusions by deft.

Apr. 12—Filed stipulation and order extending time for plaintiff to object to form of judgment, findings and conclusions and to serve and lodge proposed modifications to April 30, 1956. (Hamlin.)

Apr. 19—Filed reporter's transcript of proceedings Dec. 12, 16, 19, 20, 21, 1955, Jan. 4, 5 and 6, 1956.

Apr. 30—Filed proposed modifications to findings and conclusions, by plaintiff.

May 11—Filed objections of defendants to proposed findings and conclusions of plaintiff (letter).

May 22—Filed memorandum of corrections to reporters' transcript of proceedings.

May 22—Filed supplemental memo (letter) of deft. re transcript.

May 22—Filed findings and conclusions.

May 22—Entered judgment—filed May 22, 1956—

May 22, 1956—(Cont.)

complaint dismissed on merits and defendants to recover costs. (Hamlin.) \* \* \* \* \*

May 28—Filed memo. of costs by defendants (\$574.57).

May 31—Costs taxed \$249.57. (Clerk.)

June 6—Filed notice of appeal by plaintiff.

June 6—Filed appeal bond in sum \$250.00 (cash deposited in registry).

June 6—Filed appellant's designation of record on appeal.

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[Title of District Court and Cause.]

COMPLAINT FOR DAMAGES, BREACH OF  
TRUST AND AN ACCOUNTING, AND IN  
THE ALTERNATIVE TO RECOVER AS-  
SETS OF CORPORATION

Plaintiff, Robbins Tire and Rubber Company, Incorporated, complains of defendants and avers as follows:

Count One

1. Plaintiff, Robbins Tire and Rubber Company, Incorporated, is a corporation incorporated under the laws of the State of Alabama, with its principal office in the County of Colbert, State of Alabama.

2. Defendant Bay Rubber Company is a limited copartnership doing business in the State of California.



3. Defendants Edwin W. Pauley and C. L. Cameron are citizens and residents of the State of California and are the general partners of defendant Bay Rubber Company.

4. Defendants Wesley H. DeSellem and John B. Condrey are citizens and residents of the State of California, residing in the Northern Judicial District of the State of California.

5. The matter in controversy herein exceeds the sum or value of \$3,000, exclusive of interest and costs.

6. At all times after January 1, 1949, plaintiff was the owner of 41.403 per cent of all the issued and outstanding stock of Pacific Rubber Company, a California corporation.

7. At all times after January 1, 1949, defendants DeSellem and Condrey were, and they now are, directors of said Pacific Rubber Company and trustees for plaintiff as hereinafter averred.

8. On or about January 5, 1951, the owners of all the issued and outstanding shares of stock of said Pacific Rubber Company agreed in writing to dissolve and liquidate said corporation and to transfer all its assets to its stockholders, one of which is and was plaintiff herein as aforesaid, in a meeting duly called and convened for said purpose. Defendants Pauley, DeSellem, Condrey and Cameron were informed of said resolution on or about the date of its adoption.

9. At the time of the adoption of said resolution referred to in paragraph 8 herein there were among the assets of said Pacific Rubber Company two agreements, one dated August 28, 1950, between Reconstruction Finance Corporation on the one hand, and Pacific Rubber Company and Minnesota Mining and Manufacturing Company on the other hand, providing for the operation by Minnesota Mining and Manufacturing Company of a synthetic rubber plant located at Torrance, California, and one dated September 20, 1950, between Minnesota Mining and Manufacturing Company and Pacific Rubber Company. Said assets exceed in value the sum of \$1,000,000.

10. Plaintiff is informed and believes that on or about January 15, 1951, said assets came into the possession of defendants Condrey and DeSellem who thereupon held said assets as trustees for and with knowledge of and subject to the rights of this plaintiff.

11. Plaintiff is informed and believes and therefore avers that on or about May 21, 1951, without authority, notice to, or knowledge of plaintiff, defendants Condrey, DeSellem, Cameron, Pauley and Bay Rubber Company, conspired and agreed to transfer and did transfer the assets hereinabove described in paragraph 9 to defendant Bay Rubber Company in violation of plaintiff's rights as the beneficial owner of said assets, and that defendant Pauley, as general partner of defendant Bay Rubber Company, accepted said assets knowing of plaintiff's rights to said assets, as hereinabove set forth.

12. Plaintiff is informed and believes and therefore avers that from May, 1951, to the present time, defendants have received and are continuing to receive on account of the assets hereinabove described in paragraph 9 sums of money in excess of \$20,000 per month, 41.403 per cent of which said sums has been and is now held by defendants for the benefit of plaintiff and none of which has been received by plaintiff.

13. Plaintiff is informed and believes and therefore avers that there were other assets of Pacific Rubber Company on or about January 15, 1951, which came into the possession of defendants Condrey, DeSellem and Cameron with knowledge of and subject to the rights of plaintiff for which defendants Condrey and DeSellem have not accounted to this plaintiff.

14. Defendants Pauley, Cameron and Bay Rubber Company participated and aided in the breaches by defendants Condrey and DeSellem of their duties as trustees for plaintiff as hereinabove set forth by inducing and instructing defendants Condrey and DeSellem to transfer the assets hereinabove described in paragraph 9 to defendant Bay Rubber Company, with knowledge that said transfer was in violation of the duties of Condrey and DeSellem to plaintiff.

15. Defendants Condrey, DeSellem, Pauley, Cameron and Bay Rubber Company conspired and agreed to conceal the possession and transfer of assets described in paragraphs 9 and 13 by said



defendants from the knowledge of plaintiff by purporting to hold a meeting of the directors of Pacific Rubber Company on May 21, 1951, and purporting at said meeting on behalf of Pacific Rubber Company to transfer the assets described in paragraph 9 to defendant Bay Rubber Company for a nominal consideration of \$5,000. Said defendants failed and refused to give notice of said meeting to Glenn A. Taylor, who was then and is now Vice President of plaintiff and who was then a director of Pacific Rubber Company, or to plaintiff. Plaintiff and said Glenn A. Taylor had no knowledge of said meeting at the time it occurred and did not discover that said meeting had occurred until some time in October, 1952. In furtherance of said conspiracy and agreement said defendants from time to time until October, 1952, represented that the assets described in paragraph 9 were being held by defendants Condrey and DeSellem for the benefit of plaintiff. Prior to October, 1952, plaintiff had no knowledge that said assets had been transferred to Bay Rubber Company and that defendants Condrey and DeSellem had purported to transfer said assets worth in excess of \$1,000,000 for the nominal sum of \$5,000.

16. Plaintiff is informed and believes and therefore avers that the defendants sued herein as One Doe, Two Doe, Three Doe, One Doe Corporation, Two Doe Corporation and Three Doe Corporation have received the assets or proceeds of the assets of said stockholders of Pacific Rubber Company with knowledge of and in violation of plaintiff's

rights. Plaintiff herein is ignorant of the true names of said defendants and prays that their true names when discovered be inserted in the record herein in lieu of said fictitious names.

Wherefore, plaintiff prays that:

1. Defendants Condrey and DeSellem be required to account to plaintiff for the assets of said Pacific Rubber Company.

2. Defendants Bay Rubber Company, Pauley, Condrey, DeSellem and Cameron be required to account to plaintiff for the proceeds of said agreements, one dated August 28, 1950, between Reconstruction Finance Corporation on the one hand, and Pacific Rubber Company and Minnesota Mining and Manufacturing Company on the other hand, and one dated September 20, 1950, between Minnesota Mining and Manufacturing Company and Pacific Rubber Company.

3. A trust for the benefit of plaintiff be declared of plaintiff's share of the proceeds from said agreements.

4. Plaintiff be awarded damages in the amount of \$1,000,000 against all defendants, jointly and severally.

5. The Court grant plaintiff such further relief as may be just and equitable in the circumstances.

#### Count Two in the Alternative

15. Plaintiff hereby refers to and makes a part hereof as though fully set forth herein the averments in paragraphs 1, 2, 3, 4, 5, 6, 7, 8 and 9.

16. Defendant Pacific Rubber Company is a corporation organized and existing under the laws of the State of California and is hereby made a defendant herein.

17. Plaintiff is informed and believes and therefore avers that on or about May 21, 1951, defendants DeSellem and Condrey purported to hold a meeting of the directors of Pacific Rubber Company at which they purported to transfer the assets hereinabove described in paragraph 9 to defendant Bay Rubber Company for the nominal sum of \$5,000 in violation of the rights of Pacific Rubber Company as owner of said assets, and that defendant Pauley, as general partner of defendant Bay Rubber Company, accepted said assets knowing of Pacific Rubber Company's rights to said assets as hereinabove set forth. No notice of said meeting was given to plaintiff or to Glenn A. Taylor, Vice President of plaintiff, who was at the time of the meeting the only director of Pacific Rubber Company in addition to defendants Condrey and DeSellem.

18. Plaintiff is informed and believes and therefore avers that from May, 1951, to the present time, defendant Bay Rubber Company has received and is continuing to receive on account of the assets hereinabove described in paragraph 9 sums of money in excess of \$20,000 per month, all of which said sums are rightfully the property of Pacific Rubber Company and none of which have been received by Pacific Rubber Company.

19. Plaintiff is informed and believes and therefore avers that there are other assets belonging to Pacific Rubber Company which defendants DeSellem and Condrey have transferred to persons unknown to this plaintiff without authority of Pacific Rubber Company.

20. On January 1, 1949, and at all times thereafter, defendants Condrey and DeSellem were, and they now are, a majority of the board of directors of Pacific Rubber Company and during all said time said defendants have been and now are under the domination and control of defendant Pauley. On May 21, 1951, and at all times thereafter Pacific Rubber Company was under a disability and unable to prosecute this action.

21. Plaintiff is informed and believes and therefore avers that the defendants sued herein as One Doe, Two Doe, Three Doe, One Doe Corporation, Two Doe Corporation and Three Doe Corporation have received the assets or proceeds of the assets of said Pacific Rubber Company with knowledge of and in violation of the rights of Pacific Rubber Company. Plaintiff is ignorant of the true names of said defendants and prays that their true names when discovered be inserted in the record herein in lieu of said fictitious names.

22. No demand has been made on the board of directors or other stockholders of Pacific Rubber Company to prosecute this action because defendants DeSellem and Condrey constitute a majority of said board of directors, because defendant Con-



drey is the only stockholder of Pacific Rubber Company other than plaintiff, because defendants DeSellem and Condrey are under the domination and control of defendant Pauley, and because such action would be futile.

23. This action is not a collusive one to confer on a Court of the United States jurisdiction of any action of which it would not otherwise have jurisdiction.

Wherefore, plaintiff prays that:

1. Defendants DeSellem and Condrey be required to account to Pacific Rubber Company for the assets of said Pacific Rubber Company.

2. Defendants Bay Rubber Company, Pauley, DeSellem, Condrey and Cameron be required to account to Pacific Rubber Company for the proceeds of said agreements, one dated August 28, 1950, between Reconstruction Finance Corporation on the one hand, and Pacific Rubber Company and Minnesota Mining and Manufacturing Company on the other hand, and one dated September 20, 1950, between Minnesota Mining and Manufacturing Company and Pacific Rubber Company.

3. A constructive trust for the benefit of Pacific Rubber Company be declared of Pacific Rubber Company's share of the proceeds from said agreements.

4. Plaintiff be reimbursed in the sum of \$100,000 for costs and attorneys' fees in prosecuting this action.

5. The Court grant such further relief as may be just and equitable in the circumstances.

/s/ GEORGE BOUCHARD,  
/s/ BOUCHARD & LITTLE,  
/s/ JAMES C. HERNDON,  
Attorneys for Plaintiff.

[Endorsed]: Filed December 14, 1954.

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[Title of District Court and Cause.]

ANSWER OF THE DEFENDANT, BAY RUBBER COMPANY, A LIMITED CO-PARTNERSHIP

Comes now the Defendant, Bay Rubber Company, a limited Co-partnership, (hereinafter to be referred to as "Bay") and, severing from its co-defendants and answering for itself alone, for answer to Plaintiff's Complaint on file herein, admits, denies and avers as follows:

For Answer to Count One

1. Defendant Bay admits the allegations contained in paragraphs 1, 2 and 3 of Plaintiff's Complaint on file herein.

2. Defendant Bay admits that the Defendants, Wesley H. DeSellem, (hereinafter to be referred to as "DeSellem), and John B. Condrey, (hereinafter to be referred to as "Condrey"), are citizens and residents of the State of California as alleged in paragraph 4 of Plaintiff's Complaint, but has no information or belief sufficient to enable it to

answer the remaining allegations of said paragraph, and upon that ground, denies, generally and specifically, each and every, all and sundry, the remaining allegations therein contained.

3. Defendant Bay admits the allegations contained in paragraphs 5 and 6 of Plaintiff's Complaint, and in this regard alleges that Plaintiff at all times since January, 1949, was and now is the legal owner of 41.403 per cent of the issued and outstanding stock of Defendant Pacific Rubber Company, (hereinafter referred to as "Pacific"), but alleges that said Plaintiff at all times since January, 1949, was and now is the alter-ego of one Poncet Davis, (hereinafter referred to as "Davis"), who at all times since January, 1949, was and now is the beneficial owner of said stock, and who at all times since January 8, 1951, was and now is also the legal and beneficial owner of 36 per cent of Defendant Bay.

4. In answer to paragraph 7 of Plaintiff's Complaint, Defendant Bay admits that Defendants, DeSellem and Condrey, at all times from and after January 1, 1949, were and now are, two of the three Directors of the Defendant Pacific but denies, generally and specifically, each and every, all and sundry, the remaining allegations of said paragraph.

5. In answer to paragraph 8 of Plaintiff's Complaint, Defendant Bay admits that on or about January 5, 1951, the owners of all of the issued and outstanding shares of stock of Defendant Pa-

cific (including Plaintiff herein) at a Special Stockholders' Meeting duly called upon notice and held for that purpose, voted to wind up and dissolve the Defendant Pacific and authorized and directed the officers and directors of said Company to take such action as might be necessary and proper to wind up the affairs and dissolve the Company. Defendant Bay has no information or belief sufficient to enable it to answer the remaining allegations of said paragraph, and upon that ground denies, generally and specifically, each and every, all and sundry, said remaining allegations.

6. In answer to paragraph 9 of Plaintiff's Complaint, Defendant Bay admits that at the time of the adoption of the foregoing shareholders' resolution, there were among the assets of Defendant Pacific, three agreements, one dated August 28, 1950, between Reconstruction Finance Corporation, (hereinafter referred to as "RFC"), on one hand, and Defendant Pacific and Minnesota Mining and Manufacturing Company, (the interest of which was subsequently assigned to Midland Rubber Company, a corporation, and which will accordingly hereinafter be referred to as "Midland"), on the other hand, providing for the operation by Midland of a Synthetic Rubber Plant owned by RFC and located at Torrance, California, (which agreement will hereinafter be referred to as the "RFC-Pacific agreement"); and the other two dated September 20, 1950, between Midland and Defendant Pacific, one of which provided for the operation of said Synthetic Rubber Plant, the division of the man-



agement fee, the performance of certain obligations by Defendant Pacific, and assumption by Defendant Pacific of 35 per cent of any liability incurred by Midland for injury to or death of persons or damage to property arising out of or connected with performance of said RFC-Pacific agreement, for which Midland would not be reimbursed by RFC, (which said agreement will hereinafter be referred to as the "M-P Agreement"), and the other setting forth the respective rights and duties of Midland and Defendant Pacific with regard to inventions and patent rights, (which said agreement will hereinafter be referred to as the "Patent Agreement"), but denies, generally and specifically, each and every, all and sundry, the remaining allegations of said paragraph, and denies that said assets at the time of the adoption of such resolution or at the time of the subsequent transfer of said assets to Defendant Bay were of the value of One Million Dollars (\$1,000,000.00) or of any value in excess of the consideration given therefor by Defendant Bay to Defendant Pacific.

7. Defendant Bay denies, generally and specifically, each and every, all and sundry, the allegations contained in paragraph 10 of Plaintiff's Complaint.

8. In answer to paragraph 11 of Plaintiff's Complaint, Defendant Bay admits that on or about May 21, 1951, it received the assets described in paragraph 6 of this answer by way of written Assignment from Defendant Pacific, which Assign-

ment provided that said transfer was to become effective retroactive to January 15, 1951. In this respect, it alleges that a valuable and substantial consideration was given for said assets and denies, generally and specifically, each and every, all and sundry, the remaining allegations in said paragraph contained.

9. In answer to paragraph 12 of Plaintiff's Complaint, Defendant Bay admits that it has received from time to time, since September, 1951, income under the agreements referred to in paragraph 6 of this answer, and in this regard, alleges that said income from January 15, 1951, the date upon which the Assignment to Defendant Bay became effective, to the date hereof has averaged approximately Fourteen Thousand Dollars (\$14,000.00) per month; and denies, generally and specifically, each and every, all and sundry, the remaining allegations of said paragraph.

10. Defendant Bay has no information or belief sufficient to enable it to answer the allegations contained in paragraph 13 of Plaintiff's Complaint and upon this ground, denies, generally and specifically, each and every, all and sundry, the allegations therein contained.

11. Defendant Bay denies, generally and specifically, each and every, all and sundry, the allegations contained in paragraph 14 of Plaintiff's Complaint.

12. Defendant Bay denies, generally and specifically, each and every, all and sundry, the allegations

contained in paragraph 15 of Plaintiff's Complaint; but admits that the agreements referred to in paragraph 6 of this answer were assigned to Defendant Bay, averring in this respect that said Assignment was made for an adequate consideration, to wit: Five Thousand Dollars (\$5,000.00), and the assumption by Bay of Defendant Pacific's obligations under the M-P Agreement and Patent Agreement, including a certain contingent liability of Defendant Pacific to Midland, as described in paragraph 6 hereof.

13. Defendant Bay has no information or belief sufficient to enable it to answer the allegations as set forth in paragraph 16 of Plaintiff's Complaint, and upon that ground denies, generally and specifically, each and every, all and sundry, the allegations therein contained.

Wherefore, Defendant Bay prays that Plaintiff take nothing by reason of Count One of its Complaint on file herein and that the same be dismissed and that Defendant Bay be awarded its costs of suit and such other and further relief as to the Court seems just and proper.

#### For Answer to Count Two

14. Defendant Bay refers and makes reference to the answers which it has heretofore made to paragraphs 1, 2, 3, 4, 5, 6, 7, 8 and 9 of Count One of Plaintiff's Complaint and realleges said answers as though herein more fully set forth.

15. In answer to paragraph 17, Count Two of

Plaintiff's Complaint, Defendant Bay admits that on May 21, 1951, a meeting of the Board of Directors of Defendant Pacific was duly and regularly held and that such meeting authorized the transfer and assignment of Defendant Pacific's interest in the agreements described in paragraph 6 of this answer to Defendant Bay, and in this regard Defendant Bay alleges that it gave Defendant Pacific an adequate consideration for the assignment of said agreements, to wit: The sum of Five Thousand Dollars (\$5,000.00), and the assumption by Defendant Bay of all Defendant Pacific's obligations under said agreements, including Defendant Pacific's obligation to contribute to Midland 35 per cent of any liability incurred by Midland for injury to or death of persons or damage to property arising out of or connected with the performance of the aforesaid RFC-Pacific Agreement, where Midland was not to be reimbursed for said liability by RFC. Defendant Bay admits that no notice of said meeting was given to Plaintiff or to Glenn A. Taylor, Vice President of Plaintiff, and in this regard alleges that said meeting of the Board of Directors was a regular meeting duly and regularly held in accordance with the Bylaws of Defendant Pacific and no notice was required; and denies, generally and specifically, each and every, all and sundry, the remaining allegations of said paragraph.

16. Defendant Bay denies, generally and specifically, each and every, all and sundry, the allegations contained in paragraph 18, Count Two, of Plaintiff's Complaint; except that Defendant Bay



admits having received income from the agreements so assigned to it on and after January 15, 1951, the date upon which said assignment to Defendant Bay became effective, which income has been in an average amount of approximately Fourteen Thousand Dollars (\$14,000.00) per month, and alleges that Defendant Pacific received income on account of said assets for the month of December 1950, and for the period January 1 to January 14, 1951.

17. In answer to paragraph 19, Count Two, of Plaintiff's Complaint, Defendant Bay alleges that it has no information or belief sufficient to enable it to answer the allegations therein contained and upon that ground denies, generally and specifically, each and every, all and sundry, said allegations.

18. In answer to paragraph 20, Count Two, of Plaintiff's Complaint, Defendant Bay admits that on January 1, 1949, and at all times thereafter, Defendants Condrey and DeSellem were are now are two of the three Directors of Defendant Pacific, and alleges that the remaining Director was at all such times and now is one, Glenn A. Taylor, who was at all times and now is dominated and controlled by Plaintiff herein, and denies that Defendants Condrey and DeSellem or either of them ever have been or now are under the domination or control of the Defendant Pauley; and alleges that Defendant Bay has no information or belief sufficient to enable it to answer the remaining allegations of said paragraph and upon that ground denies, generally and specifically, each and every, all and sundry, said remaining allegations.

19. In answer to paragraph 21, Count Two, of Plaintiff's Complaint, Defendant Bay alleges that it has no information or belief sufficient to enable it to answer the allegations therein contained and upon that ground denies, generally and specifically, each and every, all and sundry, said allegations.

20. In answer to paragraph 22, Count Two, of Plaintiff's Complaint, Defendant Bay is informed and believes that neither Plaintiff Robbins Tire and Rubber Company, Incorporated, (hereinafter referred to as "Robbins"), nor Davis made any demand upon the Board of Directors or other stockholders of Defendant Pacific to prosecute this action; admits that Defendants Condrey and DeSelle constitute a majority of the Board of Directors of Defendant Pacific; admits that Defendant Condrey is the only stockholder of Defendant Pacific, other than Plaintiff; denies, generally and specifically, each and every, all and sundry, the remaining allegations of said paragraph.

21. In answer to paragraph 23, Count Two, of Plaintiff's Complaint, Defendant Bay alleges that it lacks information or belief sufficient to enable it to answer the allegations therein contained and upon that ground denies, generally and specifically, each and every, all and sundry, said allegations.

Wherefore, Defendant Bay prays that Plaintiff take nothing by reason of Count Two of its Complaint on file herein, that the same be dismissed and Defendant Bay be awarded its costs of suit and such other and further relief as to the Court may seem just and proper.

For Further, Separate, and First Affirmative Defense to Plaintiff's Complaint on File Herein, Defendant Bay Avers as Follows:

22. Defendant Pacific at all times herein mentioned was and now is a corporation duly organized and existing under and by virtue of the laws of the State of California, with its principal place of business in Oakland, California, having been duly incorporated on December 28, 1948. All of the issued and outstanding stock of Defendant Pacific at all times herein mentioned has been and now is owned by Plaintiff Robbins Tire and Rubber Company, Incorporated, (hereinafter referred to as "Robbins"), and by Defendant Condrey in the following percentages: Robbins—41.403 per cent; Condrey—58.597 per cent.

23. Plaintiff Robbins at all times herein mentioned was and now is a corporation duly organized and existing under and by virtue of the laws of the State of Alabama, with its principal place of business in Tuscumbia, Alabama. Defendant Bay is informed and believes and relying upon such information and belief, alleges that one, Davis, at all times herein mentioned has been and now is the President of Plaintiff corporation and owner of all of the issued and outstanding stock of said corporation and now dominates and controls and has at all times herein mentioned dominated and controlled all of its affairs.

24. On January 7, 1951, Inland Rubber Corpo-

ration (hereinafter referred to as "Inland"), Defendant Edwin W. Pauley (hereinafter referred to as "Pauley"), William R. Pagen, Trustee (hereinafter referred to as "Pagen"), and Davis, Trustee for Poncet Davis, Jr. and Katherine "Trinka" Davis, entered into two written Agreements, one of which agreements provided for the formation of a new corporation, to be known as Pacific Tire and Rubber Company, to purchase the assets of Defendant Pacific, and further provided for the formation of a Limited Partnership to be known as Bay Rubber Company (Defendant herein) by Pauley, Pagen and Davis, which persons would own interests in Defendant Bay in the following proportions: Pauley—51 per cent; Pagen, Trustee—14 per cent; and Davis, Trustee—35 per cent; and that said Pacific Tire and Rubber Company would issue stock and debenture notes one-half of which would be owned by Defendant Bay and the remaining one-half of which would be owned by Inland; and the second of which agreements provided in substance as follows: That whereas Defendant Condrey and Plaintiff Robbins, the owners of all of the issued and outstanding stock of Defendant Pacific, desire to dissolve Pacific and sell the assets thereof, and whereas Inland, Pauley and Davis, as Trustee, were willing to form a new corporation to be known as Pacific Tire and Rubber Company, which would purchase certain assets of Defendant Pacific, that, Plaintiff Robbins and Defendant Condrey would, on the closing date, transfer to said new corporation for valuable consideration certain assets of



Defendant Pacific which had been distributed to them by virtue of dissolution of Defendant Pacific. Said second agreement expressly stated that the agreements described in paragraph 6 of this Answer (designated as the RFC-Pacific Agreement, the "M-P Agreement" and the "Patent Agreement") were not to be assigned and transferred to said new corporation. A copy of said first agreement dated January 7, 1951, is attached hereto and by reference made a part hereof and marked "Exhibit A" and a copy of said second agreement dated January 7, 1951, is attached hereto and by reference made a part hereof and marked "Exhibit B."

25. On or about January 8, 1951, pursuant to said agreements of January 7, 1951, referred to in paragraph 24 hereof, Defendant Bay was organized as a Limited Partnership under the laws of the State of California, and ever since said date has been and now is operating as a Limited Partnership with its principal place of business in Los Angeles, California. At the time of the initial organization of said Limited Partnership Defendant Pauley was the only General Partner thereof, and Davis, as Trustee, Pagen, as Trustee, Earl W. Booz (hereinafter referred to as "Booz"), Defendant Condrey, Defendant C. L. Cameron (hereinafter referred to as "Cameron") and Orris R. Hedges (hereinafter referred to as "Hedges") were the Limited Partners thereof. The interest of said Partners in said Partnership at the time of its initial organization was as follows: Defendant Pauley—51 per cent; Davis, Trustee—35 per cent; Pagen,

Trustee—10 per cent; Booz—1 per cent; Defendant Condrey—1 per cent; Defendant Cameron—1 per cent; and Hedges—1 per cent. Thereafter and on or about December 28, 1951, the agreement for said Limited Partnership was amended in the following particulars: Defendant Cameron became a General Partner with the Defendant Pauley, in said Limited Partnership, and a portion of the interest of Pagen, Trustee, was assigned, with consent of all of the Partners, to Donald R. Macpherson (hereinafter referred to as "Macpherson"), J. L. Hayes (hereinafter referred to as "Hayes") Hayes, as Trustee, and Davis, as Trustee. As a result of such transfer of partnership interests, the interests of said parties in said Partnership were readjusted as follows: Defendant Pauley—51 per cent; Davis, Trustee—36 per cent; Booz—1 per cent; Defendant Condrey—1 per cent; Defendant Cameron—1 per cent; Hedges—1 per cent; Macpherson— $\frac{1}{2}$  per cent; Pagen— $\frac{1}{2}$  per cent; Hayes—4 per cent; and Hayes, Trustee—4 per cent. Said Articles of Partnership as amended further provided that the General Partner Defendant Pauley would contribute to the capital of the Partnership the sum of Seventy - Six Thousand Five Hundred Dollars (\$76,500.00), that General Partner Defendant Cameron would contribute to said capital the sum of Fifteen Hundred Dollars (\$1,500.00), that Limited Partner Davis, Trustee, would contribute to said capital the sum of Fifty-Four Thousand Dollars (\$54,000.00), that Limited Partners Hayes and Hayes, Trustee, would each contribute to said cap-

ital the sum of Six Thousand dollars (\$6,000.00), that Limited Partners Booz, Defendant Condrey, and Hedges would each contribute to said capital the sum of Fifteen Hundred Dollars (\$1,500.00), and that Limited Partners Macpherson and Pagen would each contribute to said capital the sum of Seven Hundred and Fifty Dollars (\$750.00). Said Articles of Partnership as amended further provided that in the event additional capital of One Hundred Fifty Thousand Dollars (\$150,000.00) should be required, on or after July 1, 1951, each of the Partners would contribute additional capital in the proportion that each Partner's interest bore to the total sum of One Hundred Fifty Thousand Dollars (\$150,000.00).

26. Defendant Bay is informed and believes and relying upon such information and belief alleges that the said Davis now is and always has been the true and beneficial owner of the entire 36 per cent interest in said Limited Partnership allegedly held by him as Trustee, and described in paragraph 25 of this Answer as held by Davis, Trustee.

27. Subsequent to July 1, 1951, and prior to the filing of this action, additional capital was in fact required for the operation of Defendant Bay and demands were made upon each Partner for his proportionate share of the sum of One Hundred Fifty Thousand Dollars (\$150,000.00). Each Partner except Davis thereafter offered to contribute his proportionate share. Upon Davis' refusal to contribute his said share, Defendant Bay insti-

tuted suit against Davis in the United States District Court for the Northern District of Ohio, Eastern Division Docket No. 30798, to compel payment of his share of said contribution, and said action is now pending before said Court.

28. On or about January 5, 1951, pursuant to Notice duly and regularly given, a Special Meeting of the Shareholders of Defendant Pacific was held at the Company's offices in Oakland, California, at which time, Defendant Bay is informed and believes and relying upon such information and belief alleges that Davis, one Glenn A. Taylor, as Attorney-in-Fact for Plaintiff Robbins, and Defendant Condrey were present. At said meeting a resolution was unanimously adopted by the Shareholders providing that Defendant Pacific would wind up its affairs and voluntarily dissolve and that its Officers and Directors were authorized to take such action as they might deem necessary or proper to wind up the affairs of said corporation and dissolve it.

29. Defendant Bay is informed and believes and relying upon such information and belief alleges that thereafter, on or about May 21, 1951, at a regular meeting of the Board of Directors of Defendant Pacific, duly held and convened at its offices in Oakland, California, said Board adopted a resolution authorizing the transfer and assignment of certain agreements to Defendant Bay, namely: that certain Agreement dated August 28, 1950, between Midland, Defendant Pacific and Reconstruction Finance Corporation, hereinabove re-



ferred to in paragraph 6 of this Answer as the RFC-Pacific Agreement, that certain agreement dated September 20, 1950, between Midland and Defendant Pacific, hereinabove referred to in paragraph 6 of this Answer as the "M-P Agreement" and that certain agreement dated September 20, 1950, between Midland and Defendant Pacific, hereinabove referred to in paragraph 6 of this Answer as the "Patent Agreement." The consideration for such transfer and assignment was the sum of Five Thousand Dollars (\$5,000.00), and the assumption by the Defendant Bay of the obligations and liabilities of the Defendant Pacific to Midland under said agreements, including an obligation to contribute to Midland 35 per cent of any liability incurred by Midland for injury or death to persons or damages to property arising out of operations under said RFC-Pacific Agreement for which Midland was not reimbursed by RFC.

30. Defendant Bay is informed and believes and relying on such information and belief alleges that at all times on and after January 7, 1951, Plaintiff Robbins, its President, Davis and its Authorized Agent, one George Bouchard (hereinafter referred to as "Bouchard"), and each of them, well knew and were fully advised and it was a fact that the aforesaid RFC-Pacific Agreement of August 28, 1950, and the aforesaid M-P and Patent Agreements of September 20, 1950, could not be transferred and assigned by Defendant Pacific to its stockholders, Defendant Condrey and Plaintiff Robbins, because neither RFC nor Midland would ac-



cept Defendant Condrey or Plaintiff Robbins as parties to said agreements; that Plaintiff Robbins was not in good standing with Reconstruction Finance Corporation and would not be accepted as assignee of Defendant Pacific's interest in said agreements; that Midland was likewise unwilling to accept Plaintiff Robbins as assignee of Defendant Pacific's interest in said agreements; that the only other shareholder of Defendant Pacific, to-wit: Defendant Condrey, was an individual not qualified under the standards established by RFC for participation in said agreements in that he could not qualify as an Operating Rubber Company, and that Defendant Pacific, in order to wind up its affairs and dissolve and to distribute its assets to its shareholders was required by law to make adequate provisions for payment of its debts and fulfillment or assumption of its liabilities. Defendant Bay is informed and believes and relying on such information and belief alleges that at all times on and after January 9, 1951, Plaintiff Robbins and the said Davis and Bouchard, and each of them, well knew and were fully advised, and it was a fact that among the liabilities of the Defendant Pacific were certain obligations created under the aforesaid M-P Agreement and Patent Agreement with Midland, including an obligation to contribute to Midland 35 per cent of any liability incurred by Midland on account of injury to or death of persons or damage to property arising out of or connected with performance of the aforesaid RFC-Pacific Agreement for which Midland,

would not be reimbursed by RFC; that Midland was unwilling to and did not accept Defendant Pacific as a participant in said RFC-Pacific Agreement unless and until Defendant Pauley guaranteed the aforesaid obligations and liabilities of Defendant Pacific to Midland, and that Defendant Pauley did, in fact, give such a guarantee to Midland to enable Defendant Pacific to participate in said Agreements; that at the time of winding up and dissolution of Defendant Pacific, Defendant Bay was the only party available and believed to be qualified to assume the interest and obligations of Defendant Pacific under the aforesaid agreements, but that Midland was unwilling to accept the sole liability of Defendant Bay for the performance of Defendant Pacific's covenants and obligations under the aforesaid agreements, and that at the time said agreements were transferred and assigned by Defendant Pacific to Defendant Bay, Defendant Pauley was required by Midland as a condition of Midland's consent to such transfer to guarantee, and did guarantee in writing, the assumed liability of Defendant Bay to Midland.

31. Defendant Bay is informed and believes and relying on such information and belief alleges that at all times on and after January 5, 1951, Plaintiff Robbins and the said Davis and Bouchard and each of them, were fully advised and well knew and it was a fact that the interest of Defendant Pacific in said RFC-Pacific Agreement of August 28, 1950, and in said M-P and Patent Agreements of September 20, 1950, would be transferred by

Defendant Pacific to Defendant Bay for a consideration of Five Thousand Dollars (\$5,000.00) and the assumption by Bay of all Pacific's liabilities and obligations thereunder.

32. Defendant Bay is informed and believes and relying on such information and belief alleges that at all times on and after May 21, 1951, Plaintiff Robbins and the said Davis and Bouchard, and each of them, were fully advised and well knew, and it was a fact that said agreements of August 28, 1950, and September 20, 1950, had been transferred and assigned by Defendant Pacific to Defendant Bay for a consideration of Five Thousand Dollars (\$5,000.00) and the assumption by Bay of all of Pacific's liabilities and obligations thereunder.

33. Defendant Bay is informed and believes and relying on such information and belief alleges that Plaintiff Robbins and the said Davis and Bouchard, and each of them, at all times on and after January 9, 1951, were fully advised and well knew, and it was a fact that the assets of Defendant Bay consisted solely of one-half of the issued and outstanding stock of Pacific Tire and Rubber Company, a corporation, a one-half interest in certain debenture notes issued by said corporation, and Bay's assigned interest under the aforesaid RFC-Pacific Agreement of August 28, 1950, and under the M-P and Patent Agreements of September 20, 1950.

34. Defendant Bay is informed and believes and relying on such information and belief alleges that

at all times on and after May 21, 1951, Plaintiff Robbins and the said Davis and Bouchard, and each of them, were fully advised and well knew and it was a fact that the only income being received by Defendant Bay and the only funds of Bay from which cash distributions could have been made were derived from Bay's income from said agreements.

35. At divers times in and after the month of September, 1951, the said Davis, without any objection whatsoever, accepted benefits arising from said agreements dated August 28, 1950 and September 20, 1950 which had been so transferred and assigned to Defendant Bay, in that the said Davis received certain cash distributions from Defendant Bay, and, as a Limited Partner in Defendant Bay, was credited with 36 per cent of all income received by said Defendant from Midland as its share of the management fee under said agreements. All of such management fee distributions to Defendant Bay and cash distributions and credits to the said Davis, as well as Defendant Bay's ownership of said assigned agreements, were reflected on the face of periodic balance sheets and profit and loss statements issued by Defendant Bay, copies of which were transmitted to and received by the said Davis, at semi-annual or annual intervals, commencing December 31, 1951.

36. Neither the said Davis nor Plaintiff Robbins at any time made any objection to any of the aforesaid credits to the account of Davis or to any of



the aforesaid cash distributions to Davis by Defendant Bay, or to the transfer of said synthetic rubber contracts by Defendant Pacific to Defendant Bay or to the consideration given for such transfer as aforesaid until approximately two months before the filing of this action.

37. Plaintiff Robbins has failed to state a cause of action against any of defendants in that both Robbins and its sole and beneficial owner Davis with full knowledge thereof participated in, consented to and ratified all of the transactions on which the complaint is based, and the said Davis participated in and received benefits from such transactions without any objection whatsoever until two months before the filing of this action.

For a Further, Separate, and Second Affirmative Defense to Plaintiff's Complaint on File Herein, Defendant Bay Avers as Follows:

38. Defendant Bay repeats the allegations of paragraphs 22 through 36 inclusive, of its First Affirmative Defense as though set forth at length at this point and incorporates them herein by reference.

39. At no time mentioned in Plaintiff's Complaint did Defendant Bay conspire with Defendants Condrey, DeSellem, Cameron or Pauley, or any of them, or with any other person, firm or corporation, to transfer the assets of Defendant Pacific described in paragraph 6 of this Answer, or any other assets of Defendant Pacific to Defendant Bay



to the damage of Plaintiff Robbins, or any other person.

40. None of the actions of Defendant Condrey or Defendant DeSellem described in Plaintiff's Complaint were in breach of any duty of said Defendants to Plaintiff herein, or to any other person, firm or corporation.

41. Defendant Bay alleges that each and every act which it performed in connection with the transfer and assignment of the said RFC-Pacific Agreement, M-P Agreement and Patent Agreement to itself was for the best interest of Plaintiff Robbins, its sole and beneficial owner, Davis, and Defendant Condrey, the shareholders of Defendant Pacific, and each of them, and was performed with the full knowledge, consent of and subsequent ratification of each of said shareholders.

For a Further, Separate, and Third Affirmative Defense to Plaintiff's Complaint on File Herein, Defendant Bay Avers as Follows:

42. Defendant Bay repeats the allegations of paragraphs 22 through 36 inclusive, of its First Affirmative Defense as though set forth at length at this point and incorporates them herein by reference.

43. Plaintiff Robbins is estopped from maintaining this action or claiming the relief sought in this Complaint because neither it nor its sole and beneficial owner, Davis, made any objection to the transfer of Defendant Pacific's interest in the said RFC-

Pacific Agreement, M-P Agreement or Patent Agreement to Defendant Bay at any time prior to the transfer thereof to Defendant Bay on May 21, 1951, or at any time after such transfer until approximately two months before the filing of this action. Because of the failure of Plaintiff Robbins, or its sole and beneficial owner, Davis, to object to any of such acts or transactions and in reliance on their silence, Defendant Bay on May 21, 1951, assumed all of the obligations of Defendant Pacific under said agreements and paid the sum of Five Thousand Dollars (\$5,000.00) to Defendant Pacific for its interest in said agreements, and ever since said date has been and is now performing all of its said assumed obligations.

44. In reliance upon the transfer of said agreements by Defendant Pacific to Defendant Bay, and because of the failure of Plaintiff Robbins, or its sole and beneficial owner, Davis, to make any objections to said transfer, on or about the 29th day of June, 1951, Defendant Bay and Midland cancelled and terminated said M-P Agreement and Patent Agreement and substituted therefor new agreements between Midland and Defendant Bay, which agreements ever since that date, have been and now are in effect. Ever since said date Defendant Bay has been and now is performing its obligations under said new agreements and has participated in said RFC-Pacific Agreement with Midland in reliance upon the assignment and transfer to it of Pacific's interest under said cancelled agreements.

For a Further, Separate, and Fourth Affirmative Defense to Plaintiff's Complaint on File Herein, Defendant Bay Avers as Follows:

45. Defendant Bay repeats the allegations of paragraphs 22 through 36 inclusive, of its First Affirmative Defense and the allegations of paragraph 44 of its Third Affirmative Defense as though set forth at length at this point and incorporates them herein by reference.

46. Plaintiff Robbins waived its right to maintain this action or to claim the relief sought in this Complaint because neither it nor its sole and beneficial owner, Davis, made any objection to the transfer of Defendant Pacific's interest in the said RFC-Pacific Agreement, M-P Agreement or Patent Agreement to Defendant Bay at any time prior to the transfer thereof to Defendant Bay on May 21, 1951, or at any time after such transfer until approximately two months before the filing of this action. Because of the failure of Plaintiff Robbins, or its sole and beneficial owner, Davis, to object to any of such acts or transactions and in reliance on their silence, Defendant Bay on May 21, 1951, assumed all of the obligations of Defendant Pacific under said agreements and paid the sum of Five Thousand Dollars (\$5,000.00) to Defendant Pacific or its interest in said agreements, and ever since said date has been and is now performing all of its said assumed obligations.

47. By reason of the aforesaid premises, Plaintiff has waived its right to maintain this action, or

to claim the relief sought in the Complaint on file herein.

For a Further, Separate, and Fifth Affirmative Defense to Plaintiff's Complaint on File Herein, Defendant Bay Avers as Follows:

48. Defendant Bay repeats the allegations of paragraphs 22 through 36 inclusive, of its First Affirmative Defense and the allegations of paragraph 44 of its Third Affirmative Defense as though set forth at length at this point and incorporates them herein by reference.

49. Neither Plaintiff Robbins nor its sole and beneficial owner, Davis, made any objection to the transfer of Defendant Pacific's interest in the said RFC-Pacific Agreement, M-P Agreement or Patent Agreement to Defendant Bay, at any time prior to the transfer thereof to Defendant Bay on May 21, 1951, or at any time after such transfer until approximately two months before the filing of this action. Because of the failure of Plaintiff Robbins, or its sole and beneficial owner, Davis, to object to any of such acts or transactions and in reliance on their silence, Defendant Bay on May 21, 1951, assumed all of the obligations of Defendant Pacific under said agreements and paid the sum of Five Thousand Dollars (\$5,000.00) to Defendant Pacific for its interest in said agreements, and ever since said date has been and is now performing all of its said assumed obligations.

50. Plaintiff Robbins, in spite of its participation, as aforesaid, in the transfer of said RFC-



Pacific Agreement, M-P Agreement and Patent Agreement to Defendant Bay, and in spite of its full knowledge of all of the facts surrounding such transfer and assignment, including knowledge of the consideration given therefor by Defendant Bay, failed to commence any action or proceeding questioning the validity of such transfer, or the adequacy of the consideration given therefor, or to request an accounting for the proceeds of such agreements, or to recover damages for the transfer thereof, or to obtain any of the relief sought in the Complaint on file herein until the institution of this action.

51. If Defendant Bay is now required to account for the proceeds of the transfer of said agreements, it will be gravely prejudiced in that in reliance upon said transfer, ever since May 21, 1951, the date on which such transfer was made, it has performed and now is performing duties and has fulfilled and now is fulfilling obligations under said M-P Agreement and Patent Agreement, and the two agreements with Midland substituted therefor, and referred to in paragraph 44 of this Answer; Defendant Bay has also distributed funds paid to it by Midland, as Bay's share of the management fee under said agreements, to the Partners in Bay (including the said Davis) in reliance on the validity of said transfer.

52. Plaintiff Robbins has therefore been guilty of Laches in failing to file, or prosecute an action to obtain the relief sought herein, and such Laches ought to and does bar this action.



For a Further, Separate, and Sixth Affirmative Defense to Plaintiff's Complaint on File Herein, Defendant Bay Avers as Follows:

53. Defendant Bay repeats the allegations of paragraphs 22 through 36 inclusive, of its First Affirmative Defense as though set forth at length at this point and incorporates them herein by reference.

54. The causes of action set forth in Plaintiff's Complaint, and each of them, accrued more than three (3) years prior to the filing of this action and Plaintiff had knowledge of the facts upon which said causes of action and each of them are based more than three years before the filing of this action. Each of said causes of action is therefore barred by the provisions of Section 338 (4) and Section 339 (1) of the Code of Civil Procedure of the State of California.

For a Further, Separate, and Seventh Affirmative Defense to Plaintiff's Complaint on File Herein, Defendant Bay Avers as Follows:

55. Defendant Bay repeats the allegations of paragraphs 22 through 36 inclusive, of its First Affirmative Defense as though set forth at length at this point and incorporates them herein by reference.

56. Defendant Bay is informed and believes and relying upon such information and belief alleges that Plaintiff corporation is wholly owned and completely dominated and controlled by one Davis, and is the alter-ego of said Davis. Said Davis is the

real party in interest herein. There is a defect of parties to this action in that said Davis has not been named either as a party Plaintiff or a party Defendant and is an indispensable party to a complete determination of the action.

For a Further, Separate, and Eighth Affirmative Defense to Plaintiff's Complaint on File Herein, Defendant Bay Avers as Follows:

57. Defendant Bay repeats the allegations of paragraphs 22 through 36 inclusive, of its First Affirmative Defense as though set forth at length at this point and incorporates them herein by reference.

58. Defendant Bay is informed and believes and relying upon such information and belief alleges that the true and beneficial owner of Plaintiff corporation is one, Davis; that said Davis is also the true and beneficial owner of a 36 per cent interest in Defendant Bay. Because of the interest of said Davis on both sides of this proceeding, the Complaint fails to state a cause of action.

For a Further, Separate, and Ninth Affirmative Defense to Count One of Plaintiff's Complaint on File Herein, Defendant Bay Avers as Follows:

59. It appears on the face of the Complaint that Plaintiff's Count One is a personal action by a shareholder (Plaintiff Robbins) of a corporation, (Defendant Pacific) to recover damages and other relief for an alleged injury to the corporation. The allegations of said Count One fail to disclose any

injury to Plaintiff's shareholders as such. Said Count One fails to state a cause of action because it should properly have been brought, if at all, in the form of a derivative shareholders suit.

For a Further, Separate, and Tenth Affirmative Defense of Count Two of Plaintiff's Complaint on File Herein, Defendant Bay Avers as Follows:

60. It appears on the face of the Complaint on file herein that Plaintiff's Count Two is a derivative suit by a shareholder (Plaintiff Robbins) for an alleged injury to a corporation (Defendant Pacific). Plaintiff Robbins fails to allege that it made any demand upon the Board of Directors of Defendant Pacific to institute an action based on the facts alleged in said Count Two, or that it made any efforts whatsoever to secure from said Board the relief it desires, or that it has ever informed Defendant Pacific or its said Board of Directors in writing of its claim against Defendant Pacific or its Directors, or that it has ever exhibited a true copy of a proposed Complaint to Defendant Pacific or its Directors before the filing of this action; and Plaintiff Robbins has further failed to allege any sufficient or adequate reason which would excuse Plaintiff Robbins from making such demand or taking such action before the filing of this suit.

For a Further, Separate, and Eleventh Affirmative Defense to Plaintiff's Complaint on File Herein, Defendant Bay Avers as Follows:

61. Defendant Bay alleges that Plaintiff Robbins

has improperly joined a cause of action for damage to a shareholder of a corporation in its personal capacity with a cause of action in the form of a derivative shareholders' suit for injury to the corporation as such.

For a Further, Separate, and Twelfth Affirmative Defense to Plaintiff's Complaint on File Herein, Defendant Bay Avers as Follows:

62. Defendant Bay is informed and believes and relying upon such information and belief alleges that the two agreements described in paragraph 9 of Plaintiff's Complaint on file herein, and for the transfer of which Plaintiff Robbins seeks relief, are in fact three agreements which are described in paragraph 6 of this Answer.

63. Defendant Bay alleges that said agreements consisted of three (3) agreements, one dated August 28, 1950 between RFC on the one hand and Pacific and Minnesota Mining & Manufacturing Company on the other hand, providing for the operation by Minnesota Mining & Manufacturing Company of a synthetic rubber plant owned by RFC and located at Torrance, California, which said agreement was dated August 28, 1950, and has hereinabove been referred to as the "RFC-Pacific Agreement", a second agreement dated September 10, 1950, between Minnesota Mining & Manufacturing Company and Defendant Pacific, which provided for the operation of said synthetic rubber plant, the division of the management fee received from RFC therefor, the performance of certain ob-



ligations by Defendant Pacific, and the assumption by Defendant Pacific of 35 per cent of any liability incurred by Minnesota Mining & Manufacturing Company for injury to or death of persons or damage to property arising out of or connected with performance of said RFC-Pacific Agreement, for which Minnesota Mining & Manufacturing Company would not be reimbursed by RFC, which said agreement was dated September 20, 1950, and has hereinabove been referred to as "M-P Agreement", and a third agreement between Minnesota Mining & Manufacturing Company and Defendant Pacific, setting forth the respective rights and duties of Minnesota Mining & Manufacturing Company and Defendant Pacific with regard to inventions and patent rights, which said agreement was dated September 20, 1950, and has hereinabove been referred to as "Patent Agreement". Subsequent to the making of such agreements the interests of Minnesota Mining & Manufacturing Company therein was assigned in writing to Midland Rubber Company, a corporation, which has hereinabove been referred to as "Midland", and Midland assumed all of the rights and duties of said Minnesota Mining & Manufacturing Company under said contracts, with the approval and consent of RFC.

64. On or about June 29, 1951, said M-P Agreement and Patent Agreement were cancelled and terminated and new agreements between Midland and Defendant Bay were substituted therefor. By cancelling said M-P Agreement and Patent Agreement, Midland gave up substantial rights against



Defendant Pacific and against Defendant Bay as the successor-in-interest to Defendant Pacific. Midland will be substantially prejudiced if the relief sought in the Complaint on file herein were granted, and for that reason should be a party to both causes of action stated in said Complaint. There is a defect of parties to this action in that Midland is neither a party Plaintiff nor a party Defendant and said Midland is a necessary and indispensable party to a complete determination of the action.

For a Further, Separate, and Thirteenth Affirmative Defense to Plaintiff's Complaint on File Herein, Defendant Bay Avers as Follows:

65. Defendant Bay alleges that Plaintiff's Complaint as a whole, and each of the Counts contained therein, fail to state facts sufficient to constitute a cause of action against Defendant Bay.

Wherefore, Defendant Bay prays that Plaintiff take nothing by reason of its complaint on file herein, that the same be hence dismissed, that Defendant Bay be awarded its costs of suit herein incurred and that this honorable Court grant Defendant Bay such other and further relief as it may deem just and proper.

Dated: January 31, 1955.

/s/ ORRIS R. HEDGES,

/s/ LLOYD W. DINKELSPIEL,

/s/ EDWARD W. ROSSTON,

HELLER, EHRMAN, WHITE &  
McAULIFFE,

Attorneys for Defendants.

EXHIBIT "A"  
AGREEMENT

This Agreement made this 7th day of January, 1951, by and between Inland Rubber Corporation, an Ohio Corporation with its principal office at Mansfield, Ohio (hereinafter called "Inland") and Edwin W. Pauley individually at 717 North Highland Avenue, Los Angeles 38, California (hereinafter called "Pauley"), William R. Pagen, Trustee, (hereinafter called "Trustee") and Poncet Davis of The Mayflower Hotel, Akron, Ohio, Trustee for Poncet Davis Jr. and Katharine "Trinka" Davis, (hereinafter called "Davis").

Witnesseth: That

Whereas, John B. Condrey and Robbins Tire and Rubber Company, the holders of all of the stock of Pacific Rubber Company, desire to liquidate said corporation and sell the assets thereof; and

Whereas, the parties hereto are willing to form a corporation to purchase certain assets of Pacific Rubber Company;

Now therefore, it is hereby agreed as follows:

(1) The parties hereto will contemporaneously with the execution of this agreement enter into an agreement with Condrey and Robbins in the form attached hereto marked "Exhibit A".

(2) The corporation to be formed by the parties hereto pursuant to said agreement shall be formed subject to the following:

(a) Its primary purpose shall be to engage in

the manufacture and sale of tires, tubes, and other rubber products.

(b) It shall have an initial paid in capitalization of \$300,000.00, \$100,000.00 in common voting stock, and \$200,000.00 in four percent (4%) debenture notes payable within ten years. Interest on said debenture notes shall be paid annually. The parties hereto agree to subordinate the principal and interest on their debenture notes to any obligations which the corporation may incur with any loaning agency or creditor. Inland will take one-half of the stock and one-half of the debenture notes, and the Limited Co-partnership referred to in sub-paragraph (c) hereof will take the other half of the stock and notes.

(c) Pauley, Trustee, and Davis will forthwith form a Limited Co-partnership to be known as Bay Rubber Company. Pauley will be the general partner, and Trustee (or his nominee or nominees) and Davis will be the limited partners. Their interests in said partnership shall be as follows:

Edwin W. Pauley	51%
William R. Pagen, Trustee	14%
Poncet Davis, Trustee	35%

(d) The Corporation's articles shall provide preemptory rights to purchase stock proportionate to stock holdings.

(e) The Corporation will be a so-called closed corporation so that neither stockholder, Inland or Bay Rubber Company may, without the consent

of the other sell, pledge or otherwise dispose of the stock held by it (other than by way of dividend or distribution in liquidation, merger or consolidation, in which event the transferee will take said stock subject to the same restrictions) without first offering all of it to the other at a price per share to be set by the offeror at the time the offer is made. Within thirty (30) days after such an offer is made, the offeree must either (1) accept the offer and agree to pay for the stock offered within the next ninety (90) days, or (2) sell all of its stock to the offeror, who must buy it at the same price and pay for same within the next ninety (90) days.

(3) On and after July 1, 1955, either stockholder, Inland or Bay Rubber Company, may force the other either to sell its stock to such moving party or to buy the stock of such moving party. This may be done by one party offering in writing to buy the other's stock at a price per share set by the offeror in such offer. In the event of such an offer the offeree shall, within sixty (60) days after the making of the offer, either (1) agree to sell his stock to the offeror at the price stated in the offer, in which case the offeror shall pay for the same within the next thirty (30) days, or (2) agree to buy the offeror's stock at said price and pay for the same within the next ninety (90) days. An appropriate reference to this agreement shall be made on the stock certificates of the corporation at the time of issuance.

(4) This agreement shall be binding upon and

inure to the benefit of the parties, their executors, administrators, heirs, successors, and assigns.

In witness whereof, said Inland Rubber Corporation has caused its corporate name to be subscribed by its duly authorized officer and said Edwin W. Pauley individually, William R. Pagen, Trustee, and Poncet Davis, Trustee, have each subscribed his name to triplicate copies hereof on the date first above written.

/s/ Edwin W. Pauley

/s/ William R. Pagen,  
Trustee.

/s/ Poncet Davis,  
Trustee.

Inland Rubber Corporation,

/s/ By Ezra K. Bryan,  
President.

Witnesseth:

/s/ Orris R. Hedges

/s/ George Bouchard

EXHIBIT "B"

AGREEMENT

This Agreement, made this 7th day of January, 1951, by and between Edwin W. Pauley of 717 North Highland Avenue, Los Angeles 38, California, Poncet Davis of the Mayflower Hotel, Akron, Ohio, Trustee for Poncet Davis Jr. and Katharine "Trinka" Davis, and Inland Rubber Corporation, an Ohio Corporation with its principal office at Mansfield, Ohio, Parties of the First Part (hereinafter called "Incorporators") and John B. Con-



drey of 4901 East Twelfth Street, Oakland, California, and Robbins Tire and Rubber Company, an Alabama Corporation with its principal office at Tuscumbia, Alabama, Parties of the Second Part (hereinafter called "Sellers").

Witnesseth: That

Whereas, the Incorporators are willing to form a corporation (hereinafter called the "Corporation") to purchase certain assets of Pacific Rubber Company, a California Corporation with its principal office at Oakland, California, (hereinafter called "Pacific") and,

Whereas, the Sellers are the owners of all of the issued and outstanding stock of Pacific, and the Sellers desire to liquidate Pacific and to sell its assets;

Now therefore, it is agreed as follows:

1. The Incorporators shall on or before January 15, 1951, (hereinafter referred to as the "Closing Date") incorporate the Corporation under the laws of the State of California with an initial capitalization of not less than Three Hundred Thousand Dollars (\$300,000.00) which may be in both stock and four per cent (4%) debenture notes and which shall actually be paid in by the Incorporators on or before the Closing Date.

2. Prior to the Closing Date the Sellers shall obtain from Pacific and deliver to the Incorporators such consent or other document as shall be necessary to permit the incorporation of the Corpo-

ration with the name of Pacific Tire and Rubber Company.

3. On the Closing Date (as of the opening of business) Sellers shall sell, transfer, and deliver to the Corporation the property hereinafter described and prior to that date shall take such steps with reference to liquidating Pacific as are necessary.

4. Prior to Closing Date Sellers shall cause Pacific to exercise the option to purchase contained in the lease agreement dated January 1, 1949, between the Reconstruction Finance Corporation and Pacific as amended on the most advantageous terms available as to deferment of payment and interest rate. The obtaining of this property is of the essence of this agreement and the Incorporators and the Corporation shall have the right to terminate this agreement if Sellers fail to obtain it.

5. On the Closing Date Sellers shall:

(a) Transfer by Grant Deed and Bill of Sale to the Corporation all of Pacific's present land, buildings, machinery and equipment (hereinafter referred to as "Fixed Assets"). It is agreed that said Fixed Assets include the land and buildings of Pacific's plant at 4901 East Twelfth Street, Oakland, California, and all of the machinery and equipment therein including that which is covered by the Reconstruction Finance Corporation lease referred to in Paragraph 4 above.

(b) Transfer by Bill of Sale to the Corporation all of Pacific's raw materials, work in process, fin-

ished goods and supplies on hand on the Closing Date.

(c) Assign to the Corporation all of Pacific's contracts and agreements which are listed and described in a schedule to be accepted by both parties and attached to this agreement as soon as possible; except, however, that the Minnesota Mining & Manufacturing Company - Pacific agreement and the Reconstruction Finance Corporation-Pacific agreement are not to be assigned to the Corporation. As to those contracts and agreements which require consent in order to be assigned, Sellers will secure such consent.

(d) Assign to the Corporation all of Pacific's present right, title, and interest in and to any copyrights, trademarks, brand names, patents, and patent applications and the like.

6. The Corporation shall pay Sellers for the items described in paragraph 5 above as follows:

[Marginal note: Modified. See letter dated January 26, 1951.]

(a) For said Fixed Assets the Corporation shall on the Closing Date pay to Sellers Two Hundred Fifty Thousand Dollars (\$250,000.00) and deliver to Sellers promissory notes aggregating Seven Hundred Fifty Thousand Dollars (\$750,000.00) and a deed of trust and chattel mortgage securing said notes and covering all of said Fixed Assets. Said notes shall bear interest at the rate of four per cent (4%) per annum. On the first of each month be-

ginning with March 1, 1951, the Corporation shall pay on said notes an amount equal to one-half of the Corporation's net profit after taxes for the monthly period from the 15th day of the second month preceding to the 15th day of the month preceding the day of payment; provided, however, that cumulatively said amounts so paid shall in no event be less than the amounts provided in the following schedule:

1. \$75,000.00 on or before July 1, 1951.
2. \$75,000.00 on or before January 2, 1952.
3. \$75,000.00 on or before April 1, 1952.
4. \$75,000.00 on or before July 1, 1952.
5. \$75,000.00 on or before January 2, 1953.
6. \$75,000.00 on or before July 1, 1953.
7. \$75,000.00 on or before January 2, 1954.
8. \$75,000.00 on or before July 1, 1954.
9. \$75,000.00 on or before January 2, 1955.
10. \$75,000.00 on or before July 1, 1955.

Said Chattel Mortgage shall provide that the Corporation may at any time dispose of any of the property covered by the mortgage provided it either (1) replaces the same at its own expense with property of similar or greater value and gives the Sellers a chattel mortgage on such replacement property, or (2) sells the same at its fair market value and turns the proceeds over to the Sellers in reduction of the last payment on said notes.

(b) As further consideration for said Fixed Assets the Corporation shall on the Closing Date pay to the Sellers the amount of any sums paid by Pacific on account of the purchase price for the assets



covered by the Reconstruction Finance Corporation lease described in paragraph 4 above. The Corporation shall assume and agree to pay the balance of the said purchase price.

(c) For said raw materials, work in process and supplies the Corporation shall pay the Sellers an amount equal to market value on the Closing Date, except in the case of crude rubber and any type of item involving less than \$10,000.00 the Corporation shall pay Pacific's book value. For said finished goods the Corporation shall pay the Sellers an amount equal to Pacific's book value plus ten per cent (10%). The amount due for finished goods and supplies shall be paid on or before April 15, 1951. The amount due for raw materials and work in process shall be paid on or before May 15, 1951. On or before the Closing Date the parties hereto will jointly make or cause to be made a physical inventory of said raw materials, work in process, finished goods and supplies.

(d) As to said contracts and agreements being assigned to the Corporation hereunder, the Corporation shall assume the obligations of Pacific thereunder except for obligations applicable to the period prior to the Closing Date.

(e) For said copyrights, trademarks, brand names, patents and patent applications and the like, the Corporation shall pay the Sellers One Thousand Dollars (\$1,000.00) on the Closing Date.

7. Sellers agree that at the time of transfer to the Corporation all of the property which is being



sold to the Corporation hereunder will be free and clear of all liens and encumbrances except:

(a) Current accrued and unpaid property taxes which shall be prorated between the Sellers and the Corporation as of the Closing Date,

(b) Easements, restrictions and rights-of-way of record as to the real property and,

(c) Any lien for unpaid purchase price applicable to the property Pacific is to acquire as provided in paragraph 4 above.

8. Sellers agree to have the plant and business of Pacific operated and conducted normally until the Closing Date. Thereafter, the Corporation shall, until full performance by it of its obligations hereunder, so operate and conduct said plant and business subject, however, to such restrictions as may be imposed by Governmental authority.

9. The Corporation shall perform for the account of the Sellers all outstanding tire and tube warranties of Pacific. The Corporation shall use its best efforts to collect Pacific's accounts receivable and shall turn over to the Sellers all proceeds of such collections less only out of pocket expenses. The Corporation shall not place said accounts receivable with an attorney or a collection agency for collection.

10. As promptly as reasonably possible, but in any event before the Closing Date, Sellers shall deliver to the Incorporators a certified copy of a resolution of the Board of Directors of Robbins

Tire and Rubber Company authorizing this agreement.

11. On the Closing Date the Corporation shall accept this agreement and deliver to Sellers a certified copy of the resolution of its Board of Directors, authorizing this agreement. Thereupon the corporation shall become and be a party to this agreement.

12. The Corporation shall indemnify and hold Sellers and Pacific harmless from all liabilities arising from obligations assumed hereunder by the Corporation.

13. In the event of the default of the Corporation in the performance of any of its obligations under paragraphs 6(a), 6(b), 6(c), 8 and 12 hereof, all obligations of the Corporation hereunder shall at Sellers' option become forthwith due and payable unless the Corporation shall have cured such defaults (as are curable) within ten (10) days after written notice of default to the Corporation and Incorporators. In the event aforesaid, Sellers shall have power in addition to other remedies provided by law, to take possession of said plant and assets and operate the same. The Sellers in such event shall also have power to take possession of any or all raw materials, work in process, finished goods and supplies. In the event of such a repossession the value of the raw materials, work in process, finished goods and supplies repossessed shall be fixed by the market value thereof on the date of repossession. Sellers shall also have power to repossess and retake

title to all copyrights and other assets described in paragraph 5 (d) hereof.

14. The Corporation shall pay Sellers, as part of the purchase price hereof, any and all applicable sales, use or excise taxes imposed by any Governmental authority.

15. This contract shall be interpreted under the laws of the State of California.

16. Until otherwise advised in writing, notices shall be directed to the following addresses by registered mail.

Edwin W. Pauley, 717 North Highland Avenue, Los Angeles 38, California.

Poncet Davis, Mayflower Hotel, Akron, Ohio.

Inland Rubber Corporation, Mansfield, Ohio.

John B. Condrey, 4901 East 12th Street, Oakland, California.

Robbins Tire and Rubber Company, Tuscumbia, Alabama.

Pacific Tire and Rubber Company (The Corporation), 4901 East 12th Street, Oakland, California.

Such notices shall be deemed to be given upon mailing.

17. This agreement shall be binding upon and inure to the benefit of the parties, their executors, administrators, heirs, successors and assigns.

18. If in connection with the closing it becomes necessary to escrow any money or papers, then the American Trust Company of San Francisco shall be escrow agent.

In Witness Whereof, the individuals who are parties have subscribed their names and the corporations who are parties have caused their names to be subscribed by their duly authorized officers to six counterparts hereof on the day first above written.

/s/ Edwin W. Pauley

/s/ Poncet Davis

Witnesseth:

/s/ Orris R. Hedges

/s/ George Bouchard

Inland Rubber Corporation

/s/ By Ezra K. Bryan,  
President

/s/ John B. Condrey

Witnesseth:

/s/ Georgia Stanley

Robbins Tire and Rubber Co., Inc.

/s/ By Poncet Davis,  
President

Accepted this fifteenth day of January, 1951,  
Pacific Tire and Rubber Com-  
pany

/s/ By E. W. Booz,  
Vice President

/s/ By John B. Condrey,  
Secretary

[Endorsed]: Filed Jan. 31, 1955.

[Title of District Court and Cause.]

ANSWER OF DEFENDANTS EDWIN W.  
PAULEY AND C. L. CAMERON

Come now the Defendants Edwin W. Pauley and C. L. Cameron, and severing from their Co-Defendants and answering each for themselves alone, for answer to Plaintiff's Complaint on file herein, admit, deny and aver as follows:

For Answer to Count One

1. Answering Defendants hereby adopt and make part of their answer to the Complaint on file herein all of the allegations of Bay Rubber Company, a Limited Partnership, Co-Defendant in the above-entitled action as set forth in paragraphs, 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12 and 13 of the answer of said Defendant Bay.

2. In answer to paragraph 8 of Plaintiff's Complaint, answering Defendants admit that on or about January 5, 1951, the owners of all of the issued and outstanding shares of stock of Defendant Pacific (including Plaintiff herein) at a special stockholders meeting duly called upon notice and held for that purpose, voted to wind up and dissolve the Defendant Pacific and authorized and directed the officers and directors of said Company to take such action as might be necessary and proper to wind up the affairs and dissolve the Company. Answering Defendants allege that they were informed of said resolution adopted by the Shareholders of Defend-



ant Pacific on or about January 5, 1951, but deny that said resolution provided for the transfer of all of the Defendant Pacific's assets to its stockholders, or that said shareholders of Defendant Pacific on said date, or at any other time, adopted any resolution of the character alleged in said paragraph 8; that they lack information or belief sufficient to answer the remaining allegations of said paragraph 8, and basing their denial on that ground deny generally and specifically, each and every, all and sundry said allegations.

Wherefore, these answering Defendants pray that Plaintiff take nothing by reason of Count One of its Complaint on file herein and that the same be dismissed and that answering Defendants be awarded their costs of suit and such other and further relief as to the Court may seem just and proper.

#### For Answer to Count Two

3. Answering Defendants hereby adopt and make part of their answer to Count Two of Plaintiff's Complaint all of the allegations of Bay Rubber Company, Co-Defendant in the above-entitled action as set forth in paragraphs 14 (except that paragraph 2 of this answer is substituted for paragraph 5 of the answer of Defendant Bay) and further adopt and make a part of this answer the allegations of paragraphs 15, 16, 17, 18, 19, 20 and 21 of the answer of the said Defendant Bay.

Wherefore, answering Defendants pray that Plaintiff take nothing by reason of Count Two of

its Complaint on file herein, that the same be dismissed and answering Defendants be awarded their costs of suit and such other and further relief as to the Court may seem just and proper.

For a further, separate, and affirmative defense to Plaintiff's Complaint on file herein, answering Defendants aver as follows:

4. Answering Defendants hereby adopt and make part of their Affirmative Defense to Plaintiff's Complaint on file herein all of the allegations of Bay Rubber Company, Co-Defendant in the above-entitled action, as set forth in its Further, Separate and First to Thirteenth (inclusive) Affirmative Defenses to Plaintiff's Complaint, with the exception of paragraphs 39, 44 and 51 thereof.

5. In lieu of paragraph 39 of Defendant Bay's answer, these answering Defendants allege that at no time mentioned in Plaintiff's Complaint did answering Defendants, or either of them, conspire with Defendants Bay, Condrey or DeSellem, or any of them, or each other, or with any other person, firm or corporation, to transfer the assets of the Defendant Pacific described in paragraph 9 of Plaintiff's Complaint, or any other assets of Defendant Pacific to Defendant Bay, to the damage of Plaintiff, or any other person.

6. In lieu of paragraph 44 of Defendant Bay's answer these answering Defendants allege that in reliance upon the transfer of said agreements by Defendant Pacific to Defendant Bay and because

of the failure of Plaintiff Robbins, or its sole and beneficial owner, Davis, to make any objections to said transfer, on or about the 29th day of June, 1951, Defendant Pauley, as a General Partner in Defendant Bay, and Defendant Cameron, as a Limited Partner in Defendant Bay, participated in and authorized the cancellation and termination of the said M-P Agreement and Patent Agreement between Defendant Pacific and Midland and in the substitution therefor of new agreements between Midland and Defendant Bay, which agreements ever since that date have been and now are in effect. Ever since said date, Defendant Bay has been and now is performing its obligations under said new agreements and has participated in the RFC-Pacific Agreement with Midland, and Defendant Pauley, as a General Partner in Defendant Bay, and Defendant Cameron, as a Limited Partner in Defendant Bay prior to December 28, 1951, and as a General Partner in Defendant Bay after said date, have acted in reliance upon said new agreements and said transfer and assignment to Defendant Bay of Pacific's interest under said cancelled agreements, and have authorized distributions to the partners of Defendant Bay (including the said Davis) from funds paid to Defendant Bay by Midland as Bay's share of the management fee under said agreements. In this respect Defendant Pauley also alleges that in reliance upon the substitution of Defendant Bay for Defendant Pacific under said M-P Agreement and Patent Agreement and in reliance upon the assignment and transfer to Defendant Bay of Pa-

cific's entire interest in RFC-Pacific Agreement, M-P Agreement and Patent Agreement, he did, on or about June 29, 1951, give his personal written guarantee to Midland that Defendant Bay would perform all of its obligations under said agreements.

7. In lieu of paragraph 51 of Defendant Bay's answer these answering Defendants allege that if they, or either of them, are now required to account for the proceeds of the transfer of said agreements, or to respond to Plaintiff in damages, they and each of them will be gravely prejudiced in that in reliance upon said transfer, ever since May 21, 1951, the date on which such transfer was made, Defendant Pauley, as a General Partner in Defendant Bay, and Defendant Cameron, as a Limited Partner in Defendant Bay prior to December 28, 1951, and as a General Partner in Defendant Bay after said date, have participated in and authorized performance of duties and the fulfillment of obligations by Defendant Bay under said M-P Agreement and Patent Agreement and under the two new agreements with Midland substituted therefor and referred to in paragraph 6 of this answer; and have further participated in and authorized the distribution by Defendant Bay of funds paid to Defendant Bay by Midland as Bay's share of the management fee under said Agreements to the Partners in Defendant Bay, (including the said Davis). In reliance upon the validity of said transfer; and in this respect, Defendant Pauley alleges that he has been further prejudiced in that on or about June 29,



1951, he gave his written guarantee to Midland that Defendant Bay would perform all of the obligations assumed by it under said agreements.

Wherefore, Defendants Pauley and Cameron pray that Plaintiff take nothing by reason of its Complaint on file herein, that the same be hence dismissed, that answering Defendants be awarded their costs of suit herein incurred and that this honorable Court grant answering Defendants such other and further relief as it may deem just and proper.

Dated: January 31, 1955.

/s/ ORRIS R. HEDGES,  
/s/ LLOYD W. DINKELSPIEL,  
/s/ EDWARD W. ROSTON,  
HELLER, EHRMAN, WHITE  
& McAULIFFE,  
Attorneys for Defendants

[Endorsed]: Filed Jan. 31, 1955.

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[Title of District Court and Cause.]

ANSWER OF DEFENDANT PACIFIC  
RUBBER COMPANY

Comes now the Defendant Pacific Rubber Company, and severing from its Co-Defendants and answering for its self alone, for answer to Plaintiff's Complaint on file herein, admits, denies and avers as follows:

For Answer to Count One

1. Answering Defendant hereby adopts and makes part of its answer to the Complaint on file



herein all of the allegations of Bay Rubber Company, a Limited Partnership, Co-Defendant in the above-entitled action as set forth in paragraphs 1, 2, 3, 4, 6, 7, 8, 10, 11, 12 and 13 of the answer of the said Defendant Bay Rubber Company.

2. In answer to paragraph 8 of Plaintiff's Complaint, answering Defendant admits that on or about January 5, 1951, the owners of all of the issued and outstanding shares of stock of Defendant Pacific Rubber Company (including Plaintiff herein) at a special stockholders' meeting duly called upon notice and held for that purpose, voted to wind up and dissolve the Defendant Pacific Rubber Company and authorized and directed the officers and directors of said Company to take such action as might be necessary and proper to wind up the affairs and dissolve the Company. Answering Defendant alleges that Defendants Pauley, Cameron, DeSellem and Condrey were informed of said resolution adopted by the shareholders of Defendant Pacific Rubber Company on or about January 5, 1951, but deny that said resolution provided for the transfer of all of the Defendant Pacific's assets to its stockholders or that said shareholders of Pacific on said date or at any other time adopted any resolution of the character alleged in said paragraph 8.

3. In lieu of paragraph 9 of Defendant Bay's answer, Defendant Pacific avers that it is informed and believes that the allegations and denials of said paragraph 9 are true and relying upon such infor-

mation and belief incorporates them herein by reference.

Wherefore this answering Defendant prays that Plaintiff take nothing by reason of Count One of its Complaint on file herein and that the same be dismissed and that answering Defendant be awarded its costs of suit and such other and further relief as to the Court may seem just and proper.

For Answer to Count Two

4. Answering Defendant hereby adopts and makes part of its answer to Count Two of Plaintiff's Complaint all of the allegations of Bay Rubber Company, Co-Defendant in the above-entitled action as set forth in paragraphs 14 (except that paragraphs 2 and 3 of this answer are substituted for paragraphs 5 and 8 of the answer of Defendant Bay), and further adopts and makes part of this answer the allegations of paragraphs 15, 16, 17, 18, 19, 20 and 21 of the answer of the Defendant Bay, except that Defendant Pacific alleges of its own knowledge those facts alleged on information and belief in paragraph 20 of Defendant Bay's answer.

Wherefore, answering Defendant prays that Plaintiff take nothing by reason of Count Two of its Complaint on file herein, that the same be dismissed and answering Defendant be awarded its costs of suit and such other and further relief as to the Court may seem just and proper.

For a further, separate, and First Affirmative Defense to Plaintiff's Complaint on file herein, answering Defendants aver as follows:

5. Answering Defendant hereby adopts and makes part of its Affirmative Defense to Plaintiff's Complaint on file herein all of the allegations of Bay Rubber Company, Co-Defendant in the above-entitled action, as set forth in its Further, Separate and First to Thirteenth (inclusive) Affirmative Defenses to Plaintiff's Complaint, except paragraph 35, 44 and 51 thereof, and except that Defendant Pacific alleges of its own knowledge those facts alleged on information and belief in paragraphs 28 and 29 of Defendant Bay's answer.

6. Defendant Pacific alleges that it is informed and believes that the facts alleged in paragraph 35 of Defendant Bay's answer are true, and relying upon such information and belief incorporates the allegations of said paragraph 35 herein by reference.

7. In lieu of paragraph 44 of Defendant Bay's answer Defendant Pacific alleges that in reliance upon the failure of Plaintiff Robbins, and its sole and beneficial owner, Davis, to make any objection either to the proposed transfer of the said RFC-Pacific Agreement, M-P Agreement or Patent Agreement by Defendant Pacific to Defendant Bay or to the actual transfer of said agreements until approximately two months prior to the filing of this action, Defendant Pacific transferred its right under said agreements to Defendant Bay, receiving a valuable consideration for such transfer and made no objection to the subsequent cancellation by Defendant Bay and Midland of said M-P Agreement

and said Patent Agreement and the substitution of Defendant Bay for Defendant Pacific as the beneficiary of the agreement to share the management fee for operation of the Synthetic Rubber Plant covered by the said RFC-Pacific Agreement, to its detriment.

8. In lieu of paragraph 51 of Defendant Bay's answer Defendant Pacific alleges that in reliance upon the failure of Plaintiff Robbins, and its sole and beneficial owner, Davis, to make any objection either to the proposed transfer of the said RFC-Pacific Agreement, M-P Agreement or Patent Agreement by Defendant Pacific to Defendant Bay or to the actual transfer of said agreements until approximately two months prior to the filing of this action, Defendant Pacific transferred its right under said agreements to Defendant Bay, receiving a valuable consideration for such transfer and made no objection to the subsequent cancellation by Defendant Bay and Midland of said M-P Agreement and said Patent Agreement and the substitution of Defendant Bay for Defendant Pacific as the beneficiary of the agreement to share the management fee for operation of the Synthetic Rubber Plant covered by the said RFC-Pacific Agreement, to its detriment.

Wherefore, Defendant Pacific Rubber Company, prays that Plaintiff take nothing by reason of its Complaint on file herein, that the same be hence dismissed, that answering Defendant be awarded its costs of suit herein incurred and that this honorable



Court grant answering Defendant such other and further relief as it may deem just and proper.

Dated: January 31, 1955.

/s/ ORRIS R. HEDGES,  
/s/ LLOYD W. DINKELSPIEL,  
/s/ EDWARD W. ROSSON,  
HELLER, EHRMAN, WHITE  
& McAULIFFE,  
Attorneys for Defendants

[Endorsed]: Filed Jan. 31, 1955.

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[Title of District Court and Cause.]

ANSWER OF DEFENDANTS WESLEY H.  
DeSELLEM AND JOHN B. CONDREY

Come now the Defendants Wesley H. DeSellem and John B. Condrey, and severing from their Co-Defendants and answering each for themselves alone, for answer to Plaintiff's Complaint on file herein, admit, deny and aver as follows:

For Answer to Count One

1. Answering Defendants hereby adopt and make part of their answer to the Complaint on file herein all of the allegations of Bay Rubber Company, a Limited Partnership, Co-Defendant in the above-entitled action as set forth in paragraphs 1, 3, 4, 6, 7, 8, 10, 11, 12 and 13 of the answer of the said Defendant Bay Rubber Company.

2. Answering Defendants admit the allegations of paragraph 4 of Plaintiff's Complaint.



3. In answer to paragraph 8 of Plaintiff's Complaint, answering Defendants admit that on or about January 5, 1951, the owners of all of the issued and outstanding shares of stock of Defendant Pacific (including Plaintiff herein) at a special stockholders meeting duly called upon notice and held for that purpose, voted to wind up and dissolve the Defendant Pacific and authorized and directed the officers and directors of said Company to take such action as might be necessary and proper to wind up the affairs and dissolve the Company. Answering Defendants allege that they were informed of said resolution adopted by the Shareholders of Defendant Pacific on or about January 5, 1951, but deny that said resolution provided for the transfer of all of Defendant Pacific's assets to its stockholders, or that said Shareholders of Defendant Pacific on said date, or at any other time, adopted any resolution of the character alleged in said paragraph 8; that they lack information and belief sufficient to answer the remaining allegations of said paragraph 8, and basing their denial upon that ground, deny generally and specifically, each and every, all and sundry, the remaining allegations thereof.

4. In answer to paragraph 12 of Plaintiff's Complaint Defendant Condrey adopts and makes part of his answer to the Complaint on file herein all of the allegations of Defendant Bay as set forth in paragraph 9 of Defendant Bay's answer; and Defendant DeSellem alleges that he lacks information

or belief sufficient to answer the allegations of paragraph 12 of said Complaint, and basing his denial on that ground denies, generally and specifically, each and every, all and sundry, the allegations thereof.

Wherefore, these answering Defendants pray that Plaintiff take nothing by reason of Count One of its Complaint on file herein and that the same be dismissed and that answering Defendants be awarded their costs of suit and such other and further relief as to the Court seems just and proper.

#### For Answer to Count Two

5. Answering Defendants hereby adopt and make part of their answer to Count Two of Plaintiff's Complaint all of the allegations of Bay Rubber Company, Co-Defendant in the above-entitled action as set forth in paragraph 14 (except that paragraphs 2, 3 and 4 of this answer are substituted for paragraphs 2, 5 and 9 respectively, of the answer of Defendant Bay), and further adopt and make a part of this answer the allegations of paragraphs 15, 16, 17, 18, 19, 20 and 21 of the answer of the said Defendant Bay, except that answering Defendants have knowledge of the matters covered by paragraph 20 of Defendant Bay's answer, and make all of the allegations and denials of said paragraph 20 as of their own knowledge.

Wherefore, answering Defendants pray that Plaintiff take nothing by reason of Count Two of its Complaint on file herein, that the same be dismissed and answering Defendants be awarded their

costs of suit and such other and further relief as to the Court may seem just and proper.

For a further, separate, and Affirmative Defense to Plaintiff's Complaint on file herein, answering Defendants aver as follows:

6. Answering Defendants hereby adopt and make part of their Affirmative Defense to Plaintiff's Complaint on file herein all of the allegations of Bay Rubber Company, Co-Defendant in the above-entitled action, as set forth in its Further, Separate and First to Thirteenth (inclusive) Affirmative Defenses to Plaintiff's Complaint, except paragraphs 39, 44 and 51 thereof, and with the further exceptions that answering Defendants have knowledge of the matters covered by paragraphs 28 and 29 of Defendant Bay's answer and make all of the allegations thereof as of their own knowledge; and that Defendant DeSellem lacks knowledge of the matters covered by paragraphs 35 and 36 of Defendant Bay's answer, but has been informed of said matters and believes the truth of said information, and accordingly makes the allegations contained in said paragraphs 35 and 36 on such information and belief.

7. In lieu of paragraph 39 of Defendant Bay's answer, these answering Defendants allege that at no time mentioned in Plaintiff's Complaint did answering Defendants, or either of them, conspire with Defendants Bay, Pauley or Cameron, or any of them, or each other, or with any other person, firm or corporation, to transfer the assets of the

Defendant Pacific described in paragraph 9 of Plaintiff's Complaint, or any other assets of Defendant Pacific to Defendant Bay, to the damage of Plaintiff, or any other person.

8. In lieu of paragraph 44 of Defendant Bay's answer these answering Defendants allege that in reliance upon the transfer of said agreements by Defendant Pacific to Defendant Bay and because of the failure of Plaintiff Robbins, or its sole and beneficial owner, Davis, to make any objections to said transfer, on or about the 29th day of June, 1951, Defendant Condrey, as a Limited Partner in Defendant Bay, participated in and authorized the cancellation and termination of the said M-P Agreement and Patent Agreement between Defendant Pacific and Midland and in the substitution therefor of new agreements between Midland and Defendant Bay, which agreements ever since that date have been and now are in effect. Ever since said date, Defendant Bay has been and now is performing its obligations under said new agreements and has participated in the RFC-Pacific Agreement with Midland, and Defendant Condrey, as a Limited Partner in Defendant Bay, has acted in reliance upon said new agreements and said transfer and assignment to Defendant Bay of Pacific's interest under said cancelled agreements, and has authorized distribution to the partners of Defendant Bay (including the said Davis) from funds paid to Defendant Bay by Midland as Bay's share of the management fee under said agreements, to his detriment.



9. In lieu of paragraph 51 of Defendant Bay's answer these answering Defendants allege that if they, or either of them, are now required to account for the interest of Defendant Pacific in said agreements which has been so transferred to Defendant Bay, or for the proceeds of the transfer of said agreements, or to respond to Plaintiff in damages, they and each of them will be gravely prejudiced, in that in reliance upon an authorization from the Board of Directors of Defendant Pacific, they caused Defendant Pacific to make such transfer to Defendant Bay; and at divers times since May 21, 1951, the date on which such transfer was made, Defendant Condrey, as a Limited Partner in Defendant Bay, has participated in and authorized performance of duties and the fulfillment of obligations by Defendant Bay under said M-P Agreement and Patent Agreement and under the two new agreements with Midland substituted therefor (referred to in paragraph 8 of this answer); and has further participated in and authorized the distribution by Defendant Bay of funds paid to Defendant Bay by Midland as Bay's share of the management fee under said Agreements to the Partners in Defendant Bay, (including the said Davis), to his detriment.

Wherefore, Defendants Condrey and DeSellem pray that Plaintiff take nothing by reason of its Complaint on file herein, that the same be hence dismissed, that Defendants Condrey and DeSellem be awarded their costs of suit herein incurred and that this honorable Court grant answering Defendants



such other and further relief as it may deem just and proper.

Dated: January 31, 1955.

/s/ ORRIS R. HEDGES,  
/s/ LLOYD W. DINKELSPIEL,  
/s/ EDWARD W. ROSSTON,  
HELLER, EHRMAN, WHITE  
& McAULIFFE,  
Attorneys for Defendants

[Endorsed]: Filed Jan. 31, 1955.

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[Title of District Court and Cause.]

### AMENDMENTS TO ANSWERS OF DEFENDANTS

Come now defendants above named and amending the Sixth Affirmative Defense in the Answer of Bay Rubber Company, a limited co-partnership, and the answers of each of said defendants so far as said Sixth Affirmative Defense is incorporated by reference in the Answer of each of them, add the following paragraph to follow Paragraph 54 in the Answer of said Bay Rubber Company:

“Paragraph 54A. The causes of action set forth in Plaintiff’s Complaint, and each of them, accrued more than two years prior to the filing of this action, and Plaintiff had knowledge of the facts upon which said causes of action and each of them are based more than two years before the filing of this action. Each of said causes of action is there-

fore barred by the provisions of Section 339(1) of the Code of Civil Procedure of the State of California.”

Come now Defendants Wesley H. De Sellem and John B. Condrey, and amending Paragraph 6 of their Answer, add the following sentence at the end of said paragraph:

“Answering defendants further allege that the causes of action stated in the Complaint, and each of them, are barred by the provisions of Section 359 of the Code of Civil Procedure of the State of California, as well as by the other statutory provisions cited in Paragraphs 54 and 54A of the Answer of Defendant Bay Rubber Company, and that said causes of action, and each of them, are barred upon the same factual grounds as alleged in Paragraph 54 of the Answer of Defendant Bay Rubber Company.”

/s/ ORRIS R. HEDGES

/s/ LLOYD W. DINKELSPIEL

/s/ EDWARD W. ROSSTON

HELLER, EHRMAN, WHITE  
& McAULIFFE

Attorneys for Defendants.

It is hereby ordered that *that* Answers of Defendants may be amended in the foregoing particulars.

Dated: January 3, 1956.

/s/ O. D. HAMLIN

United States District Judge  
Acknowledgment of Receipt of Copy attached.

[Endorsed]: Filed Jan. 3, 1956.

[Title of District Court and Cause.]

### STIPULATION

It is hereby stipulated by and between the parties hereto through their undersigned counsel that for the purpose of the instant action only, and for no other purpose, the following statements may be considered as true:

1. The United States personal income tax return of Poncet Davis for the year 1952 was filed with the proper Director of Internal Revenue on or about March 15, 1953.

2. The United States personal income tax return of Poncet Davis for the year 1953 was filed with the proper Director of Internal Revenue on or about June 1, 1954, pursuant to an extension of time duly granted.

3. The United States personal income tax return of Poncet Davis for the year 1954 was filed with the proper Director of Internal Revenue on or about March 15, 1955.

Dated: San Francisco, February 1, 1956.

/s/ ORRIS R. HEDGES

/s/ LLOYD W. DINKELSPIEL

/s/ EDWARD W. ROSSTON

HELLER, EHRMAN, WHITE  
& McAULIFFE

Attorneys for Defendants.

/s/ HERBERT W. CLARK

/s/ RICHARD J. ARCHER

/s/ GEORGE BOUCHARD

/s/ JAMES C. HERNDON

Attorneys for Plaintiff.

It is so ordered this 2nd day of February, 1956.

/s/ MICHAEL J. ROCHE

United States District Judge.

[Endorsed]: Filed Feb. 2, 1956.

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[Title of District Court and Cause.]

### ORDER

Defendants' motion to dismiss is denied.

It is ordered that judgment be entered in favor of the defendants.

Defendants to prepare findings of fact and conclusions of law and judgment.

Findings shall include, inter alia, the following:

1. That plaintiff Robbins Tire and Rubber Company, a corporation, is the alter ego of Poncet Davis, and that the knowledge of Poncet Davis, who owned almost 100% of the stock of said Robbins Tire and Rubber Company, is the knowledge of said Robbins Tire and Rubber Company;

2. That Poncet Davis, individually and as the owner of all but the qualifying shares of stock of Robbins Tire and Rubber Company, had knowledge of and consented, with the other stockholder of Pacific Rubber Company, to the transfer by Pacific Rubber Company to Bay Rubber Company of the so-called synthetic rubber contracts;

3. That the synthetic rubber contracts were never transferred to Defendant Cameron, but were transferred to Bay Rubber Company by Pacific Rubber Company;

4. That the minutes and by-laws of Pacific Rubber Company provided for the holding of regular meetings and that the regular meetings of said corporation having to do with the transfer of the synthetic contracts were validly held;

5. That the consideration to Pacific Rubber Company for the transfer by it to Bay Rubber Company of the synthetic rubber contracts was fair and reasonable under the circumstances;

6. That Defendants Condrey, DeSellem, Pauley, Cameron and Bay Rubber Company did not conspire and agree to conceal from the plaintiff and did not conceal from the plaintiff the possession and transfer of the synthetic contracts.

Dated: March 19, 1956.

/s/ O. D. HAMLIN

United States District Judge.

[Endorsed]: Filed March 20, 1956.

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[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS  
OF LAW

The above entitled case having been tried by a court sitting without a jury, the court hereby makes



the following findings of fact and conclusions of law:

### Findings of Fact

#### I.

Defendants Edwin W. Pauley, C. L. Cameron, Wesley H. DeSellem and John B. Condrey are, and were at the time of the filing of the complaint herein, citizens and residents of California. Bay Rubber Company is a limited partnership doing business in the State of California. The matter in controversy herein exceeds the sum or value of \$3,000 exclusive of interest and costs.

Defendant Pacific Rubber Company (hereinafter referred to as Pacific) was at all times mentioned herein a corporation duly organized under and by virtue of the laws of the State of California with its principal office in said State in the County of Alameda. The stock of Pacific was at all times mentioned and is now owned 58.597% by defendant John B. Condrey and 41.403% by plaintiff Robbins Tire and Rubber Company (hereinafter referred to as Robbins). John B. Condrey purchased said stock with his own funds and at all times owned said stock in his own right.

#### II.

At all times mentioned in this action the Board of Directors of Pacific consisted of John B. Condrey, Wesley DeSellem and Glenn Taylor. Glenn Taylor was at all such times and still is a vice-president of Robbins, and at all times represented its interest on said Board of Directors.

## III.

Defendants Condrey and DeSellem at all times acted on the basis of their own independent judgment in connection with the matters of which plaintiff complains, and neither DeSellem nor Condrey was at any time mentioned in this action dominated or controlled by each other or by any of the other defendants or by any other person in taking such action.

## IV.

Plaintiff Robbins is a corporation duly organized and existing under and by virtue of the laws of the State of Alabama, having its principal office in said State in the City of Tuscumbia.

## V.

All but one of the outstanding shares of stock of plaintiff Robbins were at all times mentioned herein and are now owned by Poncet Davis, and the other outstanding share at all such times was and is now owned by the secretary of Poncet Davis in order to qualify for corporate office under the laws of the State of Alabama. At all times mentioned in this action said Poncet Davis was and now is the president of, and dominated and controlled, plaintiff corporation, and said corporation was and now is, particularly in connection with the matters of which plaintiff complains, the alter ego of Poncet Davis. Poncet Davis at various times, when it was convenient for him to do so, disregarded the separate, corporate entity of Robbins, and used Robbins to transact his personal business, and this practice of

Poncet Davis was well known to defendants. In the month of January, 1951, in connection with the dissolution of Pacific and the formation of Bay Rubber Company, said Poncet Davis stated to defendant Edwin W. Pauley that Davis was taking his partnership interest in Bay Rubber Company as "Poncet Davis, Trustee," so that said interest could go to himself personally, to his children or to Robbins, whichever Davis later considered best. Defendants believed said statement and acted in reliance thereon in connection with the matters which are the subject of the complaint on file herein.

## VI.

Prior to January 5, 1951, Pacific was an operating rubber company, and had among its assets a 35% participating interest in an agreement dated August 28, 1950, and executed by and between Minnesota Mining and Manufacturing Company (hereinafter referred to as Minnesota) and Reconstruction Finance Corporation (hereinafter referred to as RFC) for the reactivation and management of a government-owned synthetic rubber plant located at Torrance, California. Said participating interest was created by two written contracts between Pacific and Minnesota, dated September 29, 1950, under the terms of which Minnesota granted Pacific a 35% participating interest in the afore-said reactivation and management contract, and Pacific assumed certain liabilities and duties in connection with the performance by Minnesota of said management contract. The contracts, on the

basis of which Pacific acquired such 35% participating interest, will hereinafter be collectively referred to as the "synthetic rubber contracts."

## VII.

Pacific was, at the end of the year 1950, in a precarious financial position because of its pressing debts, and had been for some time unsuccessfully attempting to dispose of its assets.

## VIII.

On or about January 5, 1951, at the office of Pacific, in Oakland, California, the shareholders of Pacific, to wit, Davis and Condrey, in a series of informal meetings with creditors, persons interested in buying Pacific or its assets, and certain other persons, orally agreed upon a plan for sale of the assets and dissolution of Pacific. Such plan provided (1) for the distribution of all the assets of Pacific, except the synthetic rubber contracts, to the shareholders of Pacific, and the sale by said shareholders of substantially all of such assets (excepting Accounts Receivable) to Pacific Tire and Rubber Company, a new corporation to be formed with a capitalization of \$300,000, 50% of which would be contributed by Inland Rubber Company (a wholly owned corporate subsidiary of Mansfield Tire and Rubber Company), and 50% of which would be contributed by a limited partnership to be formed, in which Edwin W. Pauley and Poncet Davis were to be the principal partners (Davis' interest being a limited one); and (2) for the transfer of the synthetic rubber contracts by Pacific to said new



limited partnership for a nominal consideration, which transfer was to be effective as of January 15, 1951, regardless of the date of actual transfer after necessary consents (i.e., of Minnesota and of RFC, if required) could be obtained.

### IX.

On or about January 5, 1951, at a duly held special meeting of the Board of Directors of Pacific, at which all directors were present, and pursuant to the aforesaid plan of dissolution and sale to which all of the shareholders of Pacific had previously agreed, said directors unanimously resolved to wind up and dissolve the affairs of Pacific.

### X.

On or about January 5, 1951, at a duly called special meeting of the shareholders of Pacific, at which all the shareholders were present, and pursuant to the aforesaid plan of dissolution and sale, said shareholders unanimously adopted a resolution electing to wind up the corporate affairs of Pacific, and voluntarily to dissolve, and authorizing and directing the officers and directors of said corporation to take such further action as might be necessary or proper to wind up the affairs of said corporation and to dissolve it.

### XI.

On or about January 8, 1951, pursuant to said plan of dissolution and sale, a limited co-partnership was formed under the name of Bay Rubber Company (hereinafter referred to as Bay). The partners in said partnership, together with their



respective interests therein on said date, were as follows:

General Partner	Percentage interest
Edwin W. Pauley	51%
Limited Partners	
Poncet Davis, Trustee	35%
Earl W. Booz	1%
John B. Condrey	1%
Orris R. Hedges	1%
C. L. Cameron	1%
Wm. R. Pagen, Trustee	10%

The articles of co-partnership of Bay were amended on December 28, 1951, at which time the following changes in ownership became effective:

General Partners	Percentage interest
Edwin W. Pauley	51%
C. L. Cameron	1%
Limited Partners	
Poncet Davis, Trustee	36%
Earl W. Booz	1%
John B. Condrey	1%
Orris R. Hedges	1%
Donald R. MacPherson	1½%
Wm. R. Pagen	1½%
J. L. Hayes	4%
J. L. Hayes, Trustee	4%

## XII.

Poncet Davis has never executed a trust covering the limited partner's interest in Bay held in the name of "Poncet Davis, Trustee," and said interest, in fact, is now and at all times mentioned herein

has been held for the benefit of Poncet Davis, individually.

### XIII.

Poncet Davis, individually, and as the owner of all but one qualifying share of the stock of Robbins, prior to December 14, 1951, had full knowledge of the value of the synthetic rubber contracts, of the terms on which Pacific had acquired a 35% participating interest therein, of the aforesaid plan for dissolution of Pacific, and sale of its assets, as well as of the transfer, and the terms and time of transfer of said synthetic rubber contracts from Pacific to Bay, of the cash consideration paid by Bay to Pacific for such transfer, and of the assumption of Pacific's liabilities under said contracts by Bay in consideration of said transfer. The terms, time and consideration for said transfer were in accordance with the aforesaid plan of dissolution and sale; and said Poncet Davis, individually, and as owner of all but one qualifying share of the stock of Robbins, and acting on behalf of Robbins, together with John B. Condrey, the other stockholder of Pacific, with full knowledge of all such matters, consented to said plan, including the transfer of the said synthetic rubber contracts by Pacific to Bay at such time and on such terms and for such consideration.

Prior to the commencement of this action, neither plaintiff nor Poncet Davis was informed by any of the defendants that on May 21, 1951, approximately \$100,000 in fees had accrued to Pacific on account of the synthetic rubber contracts with Minnesota and RFC.

Prior to the commencement of this action, neither plaintiff nor Poncet Davis was informed by defendants that under the terms of its contract with Minnesota, Pacific could voluntarily liquidate, dissolve or wind up its affairs so long as immediately thereafter its net worth was not reduced below \$500,000.

#### XIV.

The knowledge of Poncet Davis is the knowledge of Robbins, and the consent of Poncet Davis to the transfer of said synthetic rubber contracts from Pacific to Bay and to the time, terms and consideration for such transfer is the consent of Robbins and is binding upon it.

#### XV.

Said synthetic rubber contracts, in accordance with the aforesaid plan of dissolution and sale, were transferred, effective as of January 15, 1951, directly from Pacific to Bay, and were never transferred or distributed by Pacific to its shareholders, or to Claude L. Cameron, individually, or as trustee in liquidation for such shareholders, or to any other person.

#### XVI.

In consideration for the sale of all the assets of Pacific (except the synthetic rubber contracts) to Pacific Tire and Rubber Company, the shareholders of Pacific received a total payment of over \$1,000,000; and in consideration for the transfer of the synthetic rubber contracts from Pacific to Bay, Pacific received \$5,000 in cash, which was distributed to its shareholders, and Pacific was re-

lieved of its executory obligations under said synthetic rubber contracts and was able to wind up its affairs. As a result of the execution of the aforesaid plan of dissolution and sale, Robbins realized a capital gain of over \$400,000 on an \$8,000 investment in the stock of Pacific, and Condrey realized a capital gain of approximately \$580,000 on a \$12,000 investment in the stock of Pacific.

### XVII.

The consideration given by Bay to Pacific for the transfer of the synthetic rubber contracts was just and reasonable under all the circumstances.

### XVIII.

The synthetic rubber contracts were terminable on ten days' notice by RFC and upon ninety days' written notice by Minnesota, and expired by their terms on June 30, 1952. On June 30, 1952, Pacific was in dissolution, and was consequently not in a position to perform any of its duties or obligations under said contracts, or to seek renewal or extension thereof. From and after January 15, 1951, Bay did, in fact, assume and perform all of the obligations of Pacific and pay all of the expenses charged to the account of Pacific under said synthetic rubber contracts. Said contracts were renewed on a month-to-month basis from and after June 30, 1952, and said monthly renewals were obtained entirely through the efforts of Bay and were made for the benefit of Bay.

Bay Rubber Company received \$792,217.41 from Minnesota on account of the synthetic rubber con-



tracts. Poncet Davis has received in cash from Bay Rubber Company the sum of \$61,538.47, of which \$14,000.00 represented the repayment of a loan; and the partnership account of Poncet Davis in Bay Rubber Company has been credited with his entire partnership share of the balance of the proceeds of the synthetic rubber contracts received by Bay Rubber Company.

### XIX.

The synthetic rubber contracts were formally transferred by Pacific to Bay by an instrument dated May 21, 1951, which instrument was validly executed by the corporate officers of Pacific acting within their powers and pursuant to a prior agreement of the shareholders of Pacific providing for and authorizing such transfer. Said officers acted pursuant to a resolution unanimously adopted at a special meeting of the shareholders of Pacific, regularly held on January 5, 1951, authorizing and directing them to take such action as might be necessary or proper to wind up the affairs of the corporation and dissolve it, and in accordance with a resolution of the Board of Directors of Pacific adopted at a special meeting held on the same date, electing to wind up and dissolve said corporation. Said officers also acted pursuant to a resolution of said Board of Directors, expressly authorizing them to execute such transfer, which resolution was duly adopted at a regular meeting of said Board, validly held without notice in accordance with the provisions of the by-laws and minutes of Pacific, on the



third Monday of May, 1951, to wit, May 21, 1951. A quorum of said Board of Directors, entitled to vote on such latter resolution authorizing the transfer of said synthetic rubber contracts to Bay, to wit, two directors, was present at said meeting, and neither of said directors there present had any financial interest in the transaction. Each of the directors present at such meeting, acting independently, in the exercise of his best judgment, voted in favor of the adoption of the resolution authorizing said transfer, and such action of the Board of Directors of Pacific was taken in accordance with the aforesaid plan for dissolution of Pacific and sale of its assets, theretofore accepted by all of the shareholders of said corporation, and was a regular and valid action of said Board. No formal notice of the meeting of the Board of Directors of Pacific on May 21, 1951, was given to Glenn A. Taylor, and such notice was not required since said meeting was a regular meeting of the Board of Directors, and notice was not necessary under the by-laws of the corporation. Glenn A. Taylor did not attend such meeting.

Glenn A. Taylor was elected a director of Pacific at or about the time of the first meeting of its Board of Directors. At the first meeting of said Board of Directors, a resolution was adopted authorizing the holding of regular meetings of said Board without notice on the third Monday of each month at the hour of 10:00 o'clock A.M. at the principal office of the corporation. Minutes reflecting the adoption of this resolution were prepared and bound up in

the minute book of the corporation shortly after the date on which said meeting was held, and at all times thereafter remained in the corporate minute book, available for the inspection of Glenn A. Taylor, and said minutes containing such resolution were in the minute book of the corporation on every occasion when the said Glenn A. Taylor attended a meeting of the Board of Directors of the corporation or visited the offices of the corporation.

Only directors Wesley H. DeSellem and John B. Condrey attended the meeting of the Board of Directors of Pacific on May 21, 1951. The fact that director John B. Condrey was a limited partner in Bay Rubber Company was not noted in the minutes of that meeting. Condrey's interest in the transfer of the synthetic rubber contracts to Bay Rubber Company was not adverse to the interest of Pacific Rubber Company, but on the contrary, coincided with it. Condrey owned a 1% limited interest in Bay Rubber Company, and a 58.597% interest in Pacific Rubber Company.

## XX.

Poncet Davis, with full knowledge of the value and terms of said synthetic rubber contracts, of the fact and time of their transfer to Bay from Pacific, of the consideration given Pacific by Bay for the transfer, and of all facts surrounding the transfer, accepted without protest money from Bay, the source of which Davis knew or reasonably should have known was, and which was in fact, management fees received by Bay under said synthetic rubber contracts after such transfer was completed.

## XXI.

Robbins, with full knowledge of the value and terms of said synthetic rubber contracts, of the fact and time of their transfer to Bay from Pacific, of the consideration given Pacific by Bay for the transfer, and of all facts surrounding the transfer, without protest, allowed Pacific to derive benefits from said transfer and accepted its share of the cash consideration given by Bay to Pacific for such transfer upon the liquidation of Pacific and distribution of its assets (including such cash consideration) to its shareholders.

## XXII.

Robbins made no demand on defendant Pacific prior to the filing of this action, requesting that the transfer of the synthetic rubber contracts to Bay be set aside, and under all the circumstances, such a demand, if it had been made, would not have been futile.

## XXIII.

Plaintiff has been unduly dilatory in filing this action and defendants have been prejudiced by such delay.

## XXIV.

Defendants Condrey, DeSellem, Pauley, Cameron and Bay neither collectively nor individually conspired with each other or with any third person or persons to conceal from or misrepresent to Robbins or Davis the terms upon which Pacific had a participating interest in the synthetic rubber contracts, the transfer of the synthetic rubber contracts from

Pacific to Bay, the value of said contracts, the consideration given by Bay for the transfer of said contracts, the time of the transfer, or any other fact related to such transfer; and none of said defendants concealed from or misrepresented or failed to disclose to Robbins or Davis any of such matters, but, in fact, said defendants made a full and true disclosure of all such matters to Robbins and to Davis at or about the time said transfer was authorized and made.

## XXV.

Robbins has not been damaged in any sum by reason of the transfer of said synthetic rubber contracts from Pacific to Bay.

## Conclusions of Law

### I.

The transfer by Pacific of its interest in the synthetic rubber contracts to Bay was regularly and validly made.

### II.

Robbins has already received the entire share of management fees derived from the synthetic rubber contracts to which it is legally entitled, and Bay is legally entitled to retain the entire share of the management fees collected by it under the synthetic rubber contracts for the period of operations under said contracts from and after January 15, 1951, until termination of such contracts.

### III.

Neither defendant Cameron, Pauley nor Bay ever had any fiduciary relationship or duty to Rob-



bins in connection with the holding of, operation under or collection of management fees from the synthetic rubber contracts.

#### IV.

Neither defendant DeSellem nor defendant Condrey violated his duty as a director of Pacific to Robbins as a shareholder of Pacific in connection with any of the transactions which are the subject of the complaint on file herein.

#### V.

The meeting of the Board of Directors of Pacific on May 21, 1951, which adopted a resolution authorizing the transfer of the synthetic rubber contracts to Bay for a cash consideration of \$5,000 was a regular meeting, validly held; there was a quorum present at such meeting entitled to vote on said resolution; and said resolution was validly adopted by such meeting. Neither DeSellem nor Condrey was "financially interested" in the transaction which was the subject of such resolution within the meaning of California Corporations Code, §820.

#### VI.

The consideration received by Pacific for the transfer of the synthetic rubber contracts to Bay was just and reasonable under all the circumstances.

#### VII.

Robbins is the alter ego of Poncet Davis, and is chargeable with Davis' knowledge of the transactions which are the subject of the complaint on file



herein, and is bound by Davis' consent thereto and acceptance of benefits thereunder.

### VIII.

Robbins' action is barred by the statute of limitations because Robbins had full knowledge of all the facts on which its action is based more than three years prior to the filing of this action.

### IX.

Robbins, with full knowledge of the facts on which its action is based, consented to all the transactions and acts of which it complains, and consequently, has ratified said transactions and acts, and has waived its right to challenge them.

### X.

Robbins, with full knowledge of the facts on which its action is based, accepted benefits resulting from the completion of the transactions of which it complains, and has thereby ratified said transactions, and is estopped to challenge their validity or fairness.

### XI.

Robbins, with full knowledge of the facts on which its cause of action is based, failed to institute this action for an unduly long period of time, during which period Robbins accepted benefits from resulting from the completion of the transactions of which it now complains. During such period of delay, defendants irrevocably changed their position and were prejudiced by Robbins' dilatory

tactics. Robbins' action is accordingly barred by laches.

## XII.

Defendants Condrey, DeSellem, Pauley, Cameron and Bay did not conspire with each other or with any third persons to conceal from Robbins or misrepresent to Robbins the facts on which Robbins' action is based; nor did any of such defendants conceal from or fail to disclose to Robbins, or misrepresent to Robbins any of such facts.

## XIII.

Robbins suffered no damage from the transfer of the synthetic rubber contracts by Pacific to Bay.

## XIV.

Robbins is not entitled to recover its attorneys' fees incurred in connection with this action.

## XV.

Defendants are entitled to recover their costs incurred in connection with the defense of this action.

Dated this 22nd day of May, 1956.

/s/ O. D. HAMLIN

United States District Judge.

[Endorsed]: Filed March 22, 1956.

In the United States District Court, Northern  
District of California, Southern Division

No. 34294

ROBBINS TIRE AND RUBBER COMPANY,  
INCORPORATED, a corporation,  
Plaintiff,

vs.

BAY RUBBER COMPANY, a limited co-partner-  
ship, EDWIN W. PAULEY, C. L. CAMERON,  
WESLEY H. DeSELLEM, JOHN B. CON-  
DREY, PACIFIC RUBBER COMPANY, a  
corporation, ONE DOE, TWO DOE, THREE  
DOE, ONE DOE CORPORATION, TWO  
DOE CORPORATION and THREE DOE  
CORPORATION, Defendants.

### JUDGMENT

The above entitled case having come on regularly to be heard before the Honorable O. D. Hamlin, United States District Judge of the above entitled court, sitting without a jury, oral and documentary evidence having been adduced on behalf of all parties, and the court having heard oral argument and having examined the briefs filed herein, and being fully advised in the premises,

It is hereby ordered, adjudged and decreed that the complaint be dismissed on the merits, that judgment be entered for defendants, and each of

them, and that defendants recover from plaintiff their costs incurred in this action.

Dated: May 22, 1956.

/s/ O. D. HAMLIN

United States District Judge.

Entered in Civil Docket 5/22/56.

Receipt of Copy acknowledged.

[Endorsed]: Filed May 22, 1956.

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[Title of District Court and Cause.]

### NOTICE OF APPEAL

Notice is hereby given that plaintiff, Robbins Tire and Rubber Company, Incorporated, a corporation, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the judgment in this action filed and entered on May 22, 1956.

Dated: San Francisco, June 5, 1956.

/s/ HERBERT W. CLARK

/s/ RICHARD J. ARCHER

/s/ GEORGE BOUCHARD

/s/ JAMES C. HERNDON

Attorneys for Plaintiff.

MORRISON, FOERSTER, HOLLO-  
WAY, SHUMAN & CLARK,  
Of Counsel.

[Endorsed]: Filed June 6, 1956.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO RECORD  
ON APPEAL

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, hereby certify the foregoing and accompanying documents and exhibits, listed below, are the originals filed in this Court in the above-entitled case and constitute the record on appeal herein as designated by the Attorneys for the Appellant:

Excerpt from Docket Entries.

Complaint.

Answer of Bay Rubber Company.

Answer of Edwin W. Pauley and C. L. Cameron.

Answer of Pacific Rubber Company.

Answer of Wesley H. DeSellem and John B. Condrey.

Notice and Motions by Plaintiff for orders compelling answers in discovery proceedings, with supporting affidavits and excerpts from depositions.

Order Denying Motions for order compelling answers in Discovery Proceedings.

Amendments to Answers of Defendants.

Stipulation and Order re income tax returns.

Order of Court for Judgment.

Findings of Fact and Conclusions of Law, prepared and lodged by defendants.

Proposed Modifications to Findings of Fact and Conclusions of Law, prepared by plaintiff.

Memo (letter) of defendants on findings of fact and conclusions of law.



Memo of corrections to transcript.

Memo (letter) of defendants on corrections to transcript.

Findings of Fact and Conclusions of Law.

Judgment.

Notice of Appeal.

Appeal Bond.

Designation of Plaintiff for record on appeal.

Reporter's transcript of proceedings March 2, 1956.

Reporter's Transcript of proceedings Dec. 12, 16, 19, 20, 21, 1955 and Jan. 4, 5, and 6, 1956.

Plaintiff's Exhibits: 1, 2, 3, 4-a, 4-b, 5, 5-a, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 19-a, 20, 21, 22, 23, 24, 24-a, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 49-a, 50, 51, 52, and 53.

Defendants' Exhibits: A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q-1, Q-2, Q-3, Q-4, Q-5, Q-6, Q-7, R, S, T, U, V, W, X and Y.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court this 16th day of July, 1956.

[Seal]

C. W. CALBREATH,  
Clerk,

/s/ By MARGARET BLAIR,  
Deputy Clerk.

In the United States District Court for the Northern District of California, Southern Division

No. 34294

ROBBINS TIRE & RUBBER CO., Plaintiff,

vs.

BAY RUBBER CO., et al., Defendants.

REPORTER'S TRANSCRIPT

Friday, December 16, 1955

Before: Hon. Oliver D. Hamlin, Judge.

Appearances: For the Plaintiff: Messrs. Morrison, Foerster, Holloway, Shuman & Clark, by Herbert W. Clark, Esq. and Richard J. Archer, Esq.; Messrs. Bouchard & Little, by George Bouchard, Esq.; James C. Herndon, Esq., Akron, Ohio. For the Defendant: Orris R. Hedges, Esq.; Messrs. Heller, Ehrman, White & McAuliffe, by Lloyd Dinkelspiel, Esq. and Edward W. Rossten, Esq. [1]\*

\* \* \* \* \*

Mr. Dinkelspiel: Now at this time I wish to make a motion without arguing it too much at length, because probably it would be unfair to ask your Honor to rule on it without having heard more of the facts of the case, but for the preservation of the record I wanted to move to dismiss all of this case as to the defendants Edwin W. Pauley, C. L.

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\* Page numbers appearing at top of page of original Reporter's Transcript of Record.

Cameron, and Pacific Rubber Company as not proper parties. There is no allegation of any liability upon them. [16] There is no tie-in between them and any responsibility. That is to the defendants Pauley, Cameron and Pacific Rubber Company. Their only allegations as to them are some very loose allegations as to conspiracy on page 4 of the complaint, paragraph 15. There is a reference to conspiracy and you see they are alleged to have conspired and agreed to conceal certain things. I don't think, as your Honor will note, that the allegations of conspiracy is sufficiently stated. I am positive that the evidence will not sustain it. I shouldn't say "positive," I expect that the evidence will not sustain it.

Now, separately, I would like to move your Honor for the dismissal of the action as to the two directors Wesley H. DeSellem and John B. Condrey as no allegations sufficient to impose upon them personal liability has been stated nor will there be any proof in my opinion sustaining such liability.

This I believe will leave the action as it should be, if there is any, the plaintiff's right hand suing the plaintiff's left hand with the exception for a small differential. [17]

\* \* \* \* \*

(Copy of articles of co-partnership received  
in evidence as Plaintiff's Exhibit 2.)

PLAINTIFF'S EXHIBIT No. 2

Articles of Co-Partnership of Bay Rubber  
Company, A Limited Partnership

This Agreement made and entered into on this 8th day of January, 1951, by and between Edwin W. Pauley, residing in Los Angeles, California, First Party, and Poncet Davis, Trustee, residing in Akron, Ohio, Earl W. Booz, residing in Oakland, California, John B. Condrey, residing in Berkeley, California, Orris R. Hedges, residing in Los Angeles, California, C. L. Cameron, residing in Los Angeles, California, and William R. Pagen, Trustee, residing in Los Angeles, California, Second Parties.

Witnesseth:

1. The parties hereto do hereby form a limited or special partnership for the purpose of engaging in the business of the manufacture and sale of all types of rubber products and kindred articles, with the principal office of business in the City of Los Angeles, County of Los Angeles, State of California, and in such other place or places as may hereafter from time to time be agreed upon.

2. The business of the partnership shall be conducted under the firm name and style of "Bay Rubber Company" and the place at which the business of the partnership shall be transacted is 717 North Highland Avenue, Los Angeles 38, California, or such other place or places as may from time to time be agreed upon.

3. The partnership shall commence on the 8th day of January, 1951, and shall continue until July 1, 1955, and thereafter from year to year until terminated as herein provided.

4. The name, address and designation of each of the partners hereto is as follows:

Edwin W. Pauley, General Partner, 9521 Sunset Boulevard, Beverly Hills, California.

Poncet Davis, Trustee, Limited Partner, Mayflower Hotel, Akron, Ohio.

E. W. Booz, Limited Partner, Hillcastle Apartments, Oakland, California.

John B. Condrey, Limited Partner, 2818 Piedmont Avenue, Berkeley, California.

Orris R. Hedges, Limited Partner, 1551 Midvale, West Los Angeles, California.

C. L. Cameron, Limited Partner, 232 South Hamilton Drive, Beverly Hills, California.

William R. Pagen, Trustee, Limited Partner, 2531 South Westgate Avenue, Los Angeles, California.

5. Edwin W. Pauley shall be the general partner. Poncet Davis, Trustee, Earl W. Booz, John B. Condrey, Orris R. Hedges, C. L. Cameron and William R. Pagen, Trustee, shall be limited partners. Each of the partners shall contribute to the capital of the partnership the amount set opposite his name.

General Partner	Cash Contributed
Edwin W. Pauley	\$76,500.00
Limited Partners	
Poncet Davis, Trustee	52,500.00



Earl W. Booz	1,500.00
John B. Condrey	1,500.00
Orris R. Hedges	1,500.00
C. L. Cameron	1,500.00
William R. Pagen, Trustee	15,000.00

6. The net profits of the partnership shall be divided among the partners and the net losses shall be borne by them in the proportions set opposite their respective names.

General Partner

Edwin W. Pauley	51%
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Limited Partners

Poncet Davis, Trustee	35%
Earl W. Booz	1%
John B. Condrey	1%
Orris R. Hedges	1%
C. L. Cameron	1%
William R. Pagen, Trustee	10%

Notwithstanding anything to the contrary herein contained, the liability of any of the limited partners for the losses of the partnership shall in no event exceed in the aggregate the amount of their contributions to the capital of the partnership.

\* \* \* \* \*

8. There shall be kept at all times during the continuance of the partnership, full and correct books of account wherein the partnership shall enter, as well, all moneys by them or any of them, received, paid, laid out or expended in and about the business, as also all goods, wares, commodities and merchandise, bought or sold by reason or on

account of the business, and all other matters and things whatsoever to the business and management thereof in any wise belonging. Said books of account and all papers, writings and other documents of the partnership shall be kept at the principal place of business of the partnership and each partner shall individually or through his agent or agents have free access at all reasonable times to examine said books of account and other records and to make copies of the same. Said books of account shall be closed and the profits and losses of the business fixed and ascertained, and the accounts thereof adjusted on the 31st day of December, 1951, and thereafter said books of account shall be closed and the profits and losses fixed and ascertained.

9. On or before the 15th day of February in each year, commencing February 15, 1952, a general account shall be made and taken by the partners showing all purchases, receipts, payments, engagements, and transactions of the partnership during the immediate preceding year ending December 31, and all capital, property, engagements and liabilities for said period, and the said general account shall, immediately after the same shall be taken, be reduced to writing and examined by each of said partners, whereupon said account, as so rendered and approved by said partners, shall be kept with the books of the partnership and thereafter each of said partners shall be bound by every entry and statement of account therein contained, except that if any manifest error be found therein by any of the partners within two (2) months after the ren-

dering or stating of said account, then the said error shall be rectified and said account, so corrected or modified, shall be binding upon said partners in the same manner as above stated.

\* \* \* \* \*

11. During the continuance of this partnership the rights and liabilities of the general partner and limited partners respectively shall be as follows:

(a) The general partner shall use his best efforts to operate and manage the business of the partnership; it being understood that he has other business and personal interests and that a substantial portion of his time may be required in the management of said other interests. Each of said partners hereby agrees that the general partner shall have full power and authority to do any and all things necessary or proper to operate and manage said partnership business. He shall receive no compensation for his services but shall be entitled to reimbursement for his out-of-pocket expense in the operation and management of the partnership business.

(b) Any limited partner shall have the right to withdraw or reduce his contribution to the capital of the partnership upon December 31 of any year, commencing December 31, 1955, provided that at least four months prior written notice of the intention to withdraw or reduce such contribution shall have been sent by such limited partner to the general partner to the principal office of the partnership. In addition, any limited partner shall have the right to withdraw his capital contribution upon termination or dissolution of the partnership. Not-

withstanding the foregoing, no part of the capital contribution of any limited partner shall be withdrawn unless all liabilities of the partnership, except liabilities to the general partner and to limited partners on account of their contributions, have been paid, or unless the partnership has assets sufficient to pay them. No limited partner shall have the right to demand or receive property other than cash in return for his contribution and no limited partner shall have priority over any other limited partner, either as to contributions to capital or as to compensation by way of income. After any withdrawal of capital by a limited partner, his share in the profits and losses shall be in the proportion which his reduced capital bears to the total capital of the partnership on the date of such withdrawal; and the shares of the other partners shall be increased in the proportions in which they have theretofore shared the profits and losses of the partnership. \* \* \* \* \*

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JOHN CONDREY

called as a witness on behalf of the Plaintiff,  
sworn. [20]

Direct Examination

Q. (By Mr. Clark): Mr. Condrey, state your full name, please?     A. John B. Condrey.

Q. Where do you live?

A. 48 Mosswood Road, Berkeley.

The Court: Keep your voice up, please.

The Witness: 48 Mosswood Road, Berkeley, California.



(Testimony of John Condrey.)

Q. (By Mr. Clark): Where are you employed, Mr. Condrey?

A. I am employed in Oakland at the Pacific Tire & Rubber Company.

Q. How long have you been employed by Pacific Tire & Rubber Company?

A. Since its formation, January 16th, 1951.

Q. And do you occupy any official position or any office with Pacific Tire & Rubber Company?

A. I do.

Q. What is that office?

A. Treasurer of the corporation.

Q. What was your employment before January 16th, 1951?

A. I was employed by Pacific Rubber Company.

Q. A corporation. And how long had you been employed by that company? How long were you employed?

A. Since its formation, December 28th, 1948.

Q. From the time of its organization? [23]

A. Yes.

Q. And are you still employed by that company?

A. I don't understand the question.

Q. Well, are you still employed by Pacific Rubber Company as well as by Pacific Tire & Rubber Company?

A. It's in dissolution. I am not certain whether I am still employed.

Q. You were a director of Pacific Rubber Company, were you? A. I was.

Q. For how long, from the time of its organization?



(Testimony of John Condrey.)

A. From the time of its organization.

Q. Until the date of its dissolution or liquidation, or dissolution, rather? A. That's right.

Q. And you are still acting as director in liquidation of that corporation, are you not?

A. That is right.

Q. How many directors did Pacific Rubber Company have? A. Three directors.

Q. Name them, please. Yourself—who are the other two?

A. Wesley H. DeSellem and Mr. Glen Taylor.

Q. Who is Mr. Glen Taylor?

A. He was Vice President of Robbins Tire & Rubber Company.

Q. And who is DeSellem, or what was he?

A. He was Vice President and Treasurer of Pacific Rubber [24] Company.

Q. And a member of the Board of Directors?

A. That's right.

Q. Has the personnel of that Board of Directors ever been changed, Pacific Rubber Company?

A. No.

Q. It's the same now as it was when the corporation was organized, is that correct?

A. That's correct.

Q. Were you a stockholder in Pacific Rubber Company? A. I was.

Q. You are now? A. I am now.

Q. And you have been continuously?

A. I have.

(Testimony of John Condrey.)

Q. Was Mr. DeSellemer ever a stockholder in Pacific Rubber Company?      A. He was not.

Q. He was a paid employee?

A. Right, correct.

Q. You were Secretary of Pacific Rubber Company, too, were you not?

A. Secretary of Pacific Rubber Company, yes.

Q. From when until when?

A. From its formation until—— [25]

Q. January 28, 1951——

A. January 15th——

Q. You tell me.

A. Excuse me. Its formation was December 28, 1948.

Q. That's right.      A. From that date.

Q. Down to now?      A. That's right.

Q. You are still secretary? Is one of your functions as secretary that of keeping the minutes of the corporation?      A. That's correct.

Q. Will you describe the process, please, of formulating the minutes of Pacific Rubber Company? A meeting was held of the Board of Directors, or of the stockholders, and then what did you do?

A. I ordered the minutes to be written, typed, and placed in the minute book.

Q. To whom did you give that order?

Mr. Dinkelspiel: When, Mr. Clark?

Q. (By Mr. Clark): I am asking for his general practice now. We'll get down to the particulars. This is largely preliminary, if your Honor please. To whom did you give such order?

(Testimony of John Condrey.)

A. To a secretary or stenographer who would perform the act of typing them. [26]

Q. All right. And what did she use for the purpose of deriving information as to what had happened?

A. Information that I had given her.

Q. And how did you give her that information? Orally or in memorandum form?

A. Either way, from notes that I had taken at a meeting or information that I had.

Q. Let me put the question in a different form. Did you dictate the notes to a stenographer, did you dictate the minutes to a stenographer?

A. I did.

Q. Was that your uniform practice?

A. That was my uniform——

Q. You drew all the minutes of Pacific Rubber Company in that way? A. That's right.

Q. You, yourself, dictated all of the minutes from the organization meeting, from and including the organization meeting down to and including the present day you have done that?

A. That's right.

Q. You know they are correct then?

A. Yes.

Q. Do you know what the stockholders' interest, each stockholder's was in Pacific Rubber Company, a corporation? [27]

A. There were two Pacific Rubber Companies, which one?

Q. This is the old one, the first one.

(Testimony of John Condrey.)

A. The old one, which later became Oakland Rubber Company.

Q. That's right. E. W. Pauley owned what percent of the total stock?

A. Approximately 51 percent.

Q. 51 percent plus. Poncet Davis was a stockholder, wasn't he? A. Yes.

Q. And he owned what percent?

A. Approximately 35 percent.

Q. And the remainder of the 100 percent was owned by whom?

A. Scattered share holders, small share holders.

Q. Rather a large number, some 13 percent?

A. Yes. You were asking me what date, which date?

Q. I am asking you up to December 12, 19—December 28, 1948? A. At that time?

Q. Yes, at that time. Now, it is a fact, isn't it, the name of Pacific Rubber Company was changed in December of 1948? A. That's correct.

Q. On December 28, 1948?

A. That's right.

Q. Is that your recollection? And it was changed to Oakland [28] Rubber Company, is that right?

A. Yes.

Q. Now what did Oakland Rubber Company do with its assets on December 28, 1948?

A. Oakland Rubber Company sold its assets to a new corporation that was formed bearing the same name as the name of Pacific Rubber Company.

Q. Sold its assets to Pacific Rubber Company, a

(Testimony of John Condrey.)

new corporation. Do you remember when that corporation was formed?

A. It was formed simultaneous with the change of name.

Q. All right. Who owned and now owns the stock of Pacific Rubber Company, the new corporation?

The Court: The distinction between the old company and the new company is that the first was Pacific Rubber Co. and the new is Pacific Rubber Company, is that right?

Mr. Clark: No, they are exactly the same name, if your Honor please. The distinction between the two is the stock holdings, that's about all.

The Witness: Yes.

Q. (By Mr. Clark): Who were the stockholders of Pacific Rubber Company, the new corporation?

A. Myself and Robbins Tire & Rubber Company Incorporated.

Q. And you owned how much of the stock of that company? You own it?

A. 58.59701, I believe that is the correct figure.

Q. And the plaintiff in this case, Robbins Tire & Rubber Company?

A. Robbins Tire & Rubber Company, Incorporated, own the remaining 41.40299.

Q. Now how does it happen those decimal points are carried out so far, five points? What happened to the 13 percent of Pacific Rubber Company stock, that was the ownership of which was scattered?



(Testimony of John Condrey.)

A. That concerns a prior corporation which I had no interest in.

Q. You don't know what happened to that 13 percent? A. No.

Q. So you therefore don't know why the stockholdings, percentage figures showing stock holdings of the defendant Condrey, yourself and the plaintiff Robbins Tire & Rubber Company were carried out five decimal points? A. That's correct.

Q. Now, I think you have already testified that you were a director and are a director of Pacific Rubber Company, the new corporation, that DeSelle was a director and is now a director, is that right? A. That's correct.

Q. And that Glen Taylor was and still is a director? A. That's correct.

Q. And he was and is the Vice President of plaintiff [30] Robbins Tire & Rubber Company?

A. I believe he is.

Q. That is your information?

A. To my knowledge.

Q. Now when was Pacific Tire & Rubber Company formed?

A. Pacific Tire & Rubber Company was formed on or about January 16th, 1951. The articles of incorporation, I believe, were filed a few days prior to that, probably January 5th or thereabouts, 1951.

Q. And who were and are its stockholders?

A. Bay Rubber Company, a limited co-partnership, 50 percent, Inland Rubber Company, a corporation—I am not sure, Inland, 50 percent.

(Testimony of John Condrey.)

Q. You bought the stock that you had, you yourself bought the stock that you had and have in Pacific Rubber Company, the new corporation, did you? A. I did.

Q. And what did you pay for it?

A. The capitalization was \$20,000 and my percentage of that was approximately eleven thousand some odd dollars.

Q. Something less than \$12,000 then?

A. 58 percent of \$20,000.

Q. Did you use your own money to do that?

A. That's right. [31]

\* \* \* \* \*

(Agreement marked Plaintiff's Exhibit 5 in evidence; Agreement marked Plaintiff's Exhibit 5-a in evidence.) [35]

\* \* \* \* \*

## PLAINTIFF'S EXHIBIT No. 5

### Agreement

This Agreement, made and entered into as of the 20th day of September, 1950 by and between Minnesota Mining and Manufacturing Company, a corporation organized under the laws of the State of Delaware, (hereinafter referred to as "Minnesota"); and Pacific Rubber Company, a corporation organized under the laws of the State of California, (hereinafter referred to as "Pacific");

Witnesseth:

Whereas, as of the 28th day of August, 1950, Minnesota and Pacific entered into a lease and Op-

## Plaintiff's Exhibit No. 5—(Continued)

Operating Contract (hereinafter called "Operating Contract") with the Reconstruction Finance Corporation (hereinafter referred to as "Reserve") to lease and operate Reserve's Synthetic Rubber plant at or near Los Angeles, California (hereinafter referred to as the "Plant"); and

Whereas, said Operating Contract provides for the participation by Pacific in the performance thereof and Minnesota and Pacific have entered into an Agreement in writing dated as of September 20, 1950, (hereinafter referred to as the "M-P Operating Agreement") setting forth their respective rights and duties with respect to the performance of said operations and the division of compensation received in respect thereto; and

Whereas, it is anticipated that certain inventions, improvements and/or discoveries may result from the operations of said Plant under said Operating Contract and/or from the conduct of research jointly by Minnesota and Pacific at said plant and/or elsewhere as the parties may hereafter agree, and the parties are desirous of setting forth their respective rights and duties with respect to the utilization of said inventions, improvements and/or discoveries, and in, to and under any Letters Patent which may be obtained with respect thereto;

Now, Therefore, in consideration of the promises and the mutual covenants herein contained, it is agreed by and between Minnesota and Pacific as follows:

Section 1. The term "Government Agency" shall

## Plaintiff's Exhibit No. 5—(Continued)

mean any department or instrumentality of the United States of America.

Section 2. The term "Synthetic Rubber" shall have the same meaning as that set forth in the Operating Contract.

Section 3. The term "Joint Operations" shall mean and include:

(a) All operations of the parties hereafter conducted by the parties under the Operating Contract and any other contract hereinafter entered into jointly by the parties with any Government Agency.

(b) Any operations conducted jointly by the parties pursuant to any written agreement between the parties.

Section 4. The term "Joint Inventions" shall mean any and all inventions, discoveries and/or improvements (including but not limited to Synthetic Rubber) arising out of or derived from or procured with respect to Joint Operations.

Section 5. Minnesota and Pacific mutually and reciprocally agree that each will make available to the other, from time to time during the term of the said Operating Contract, all technical information which either of them now possesses or hereafter may acquire, relating to the manufacture of Synthetic Rubber and to processes and apparatus which are used, or may be used, in the manufacture of Synthetic Rubber, whether such Synthetic Rubber processes or apparatus have been patented, patents applied therefor, or whether the same are patentable or unpatentable.

## Plaintiff's Exhibit No. 5—(Continued)

Minnesota and Pacific shall promptly transfer and make available to each other all technical information, of any nature or character whatsoever, in the possession of either or their employees, acquired in connection with or resulting from the operation under the said Operating Contract or this Agreement, which information each party shall be completely free to use in connection with the production of Synthetic Rubber (as defined and limited in the Operating Contract), regardless of whether such information be patented or unpatented, patentable or unpatentable.

Neither Minnesota nor Pacific shall have any obligation hereunder to pay any compensation, for any patents, inventions, improvements, or technical information owned or in the control of the other and used in the performance of said Operating Contract.

\* \* \* \* \*

Section 14. Minnesota and Pacific each agree to keep records and books of account of their respective sales and/or use of Patented Products. On or before the 20th day of January, April, July and October, Minnesota and Pacific shall deliver each to the other a report setting forth their respective sales and uses of Patented Products and the Total Value thereof in respect to the preceding quarter calendar year. Pacific shall accompany its report to Minnesota by payment of royalty in the amount of three per cent (3%) of its Total Value and the same shall be held by Minnesota as administrator of



## Plaintiff's Exhibit No. 5—(Continued)

the Research and Patent Fund. Minnesota shall credit to the Research and Patent Fund the amount of three per cent (3%) of its Total Value as shown on the said report. The books of account of each party shall be available to Certified Public Accountants designated by the other party as their qualified representatives for the purpose of checking once in each calendar quarter the accuracy of said reports and royalty payments. The reports of said Certified Public Accountants to the respective parties shall be limited to the accuracy of said reports and payments under the provisions of this Agreement and shall not under any circumstances include the transmission of any other information such as, without limitation to generality, any information as to customer lists or the amount of sales or use of any particular Patented Products.

\* \* \* \* \*

Section 16. Minnesota shall establish a separate account designated as the "Research and Patent Fund" into which it shall credit as income thereof:

(a) All funds received by Minnesota and/or Pacific from any Government Agency for the purpose of conducting research.

(b) The royalty paid by Pacific to Minnesota and the royalty credited by Minnesota, all as provided in Section 14 of this Agreement.

(c) The full amount of all royalties paid to Minnesota by any third parties licensed by Minnesota

Plaintiff's Exhibit No. 5—(Continued)  
under M-P Patent Rights as provided in Section 9 of this Agreement.

(d) The full value of any consideration received by Minnesota for the transfer of title of any M-P Patent Right as provided in Section 15 of this Agreement.

(e) Any monies received as the result of infringement litigation as provided in Section 18 of this Agreement.

Section 17. Minnesota shall charge as expense against said Research and Patent Fund:

(a) The actual cost of the conduct of any joint Program of Research.

(b) The entire amount of patent cost as provided in subsection (e) of Section 7 of this Agreement.

(c) The entire expense incurred by Minnesota in negotiation with third parties of licenses under M-P Patent Rights including the cost of attorneys services.

(d) The expense of infringement litigation as provided in Section 18 of this Agreement.

Section 18. (a) In the event that Minnesota or Pacific shall consider it necessary or desirable to bring action for infringement against any infringer of any M-P Patent Right, the party proposing such litigation shall fully advise the other party in writing with respect to such proposed litigation and such other party shall promptly advise the proposing party in writing as to whether or not it con-

## Plaintiff's Exhibit No. 5—(Continued)

curs in the necessity or desirability of such litigation. Failure by such other party to so advise the proposing party within thirty (30) days after receipt of said advice shall constitute concurrence by such other party unless the proposing party shall have granted additional time for such other party to determine its position.

(b) In the event Minnesota and Pacific shall concur as to such litigation the cost thereof shall be borne by the Research and Patent Fund except that, if the funds then in the Research and Patent Fund and paid thereto during the litigation are insufficient to pay for such litigation, the excess cost shall be paid on the basis of sixty-five (65%) per cent thereof by Minnesota and thirty-five (35%) per cent thereof by Pacific, unless and until either party shall have given not less than thirty (30) days written notice to the other of its election to withdraw from the further prosecution of such litigation, in which event the other party may continue such litigation at its own expense insofar as the cost shall exceed the funds then in the Research and Patent Fund and paid thereto during the litigation. Any sum of money recovered as damages as a result of litigation carried on by both parties as above provided shall be paid into the Research and Patent Fund as an item of income thereof. In the event of such withdrawal by one party the continuing party shall have the right to withhold the payment of any royalty to the Research and Patent Fund with respect to its utilization of M-P Patent Rights sub-

## Plaintiff's Exhibit No. 5—(Continued)

sequent to the date of withdrawal and until the termination of such litigation insofar as the obligation to pay royalty is dependent upon the determination as to validity and/or infringement of any claim or claims involved in such litigation. Upon the termination of such litigation the continuing party shall pay to the Research and Patent Fund the royalty so withheld only insofar as it shall be with respect to the utilization of inventions coming within the valid scope of the claim or claims as determined by such litigation. Any sum of money recovered as damages as the result of such litigation shall be applied: first, to the recoupment of the expense, if any, in excess of the funds of the Research and Patent Fund, incurred by the party continuing such litigation after withdrawal of the other party; second, to the recoupment of the Research and Patent Fund for expense paid therefrom; third, to recoupment of both parties of any excess cost paid by them prior to withdrawal of one party, (pro rata on the basis of contribution if the funds are insufficient for full recoupment); and finally the remainder, if any, shall be retained by the party continuing such litigation.

(c) In the event Minnesota or Pacific shall not concur as to litigation, considered necessary or desirable by Minnesota or Pacific, as the case may be, the party advocating such litigation may proceed alone at its own expense with no part of the cost of such litigation to be paid by the Patent and Research Fund. In such event the litigating party



## Plaintiff's Exhibit No. 5—(Continued)

shall have the right to withhold the payment of any royalty to the other party with respect to its utilization of M-P Patent Rights from the beginning of such litigation until the termination thereof insofar as the obligation to pay royalty is dependent upon the determination as to validity and/or infringement of any claim or claims involved in such litigation. Upon the termination of such litigation the litigating party shall pay to the Patent and Research Fund the royalty so withheld only insofar as it shall be with respect to the utilization of inventions coming within the valid scope of the claim or claims as determined by such litigation. Any sum of money recovered as damages as the result of such litigation shall be the sole property of the litigating party.

(d) The defense of an action brought by any third party for declaratory judgment with respect to the validity or infringement of any patent right shall be subject to the same provisions as above set forth in subsections (a), (b) and (c) of this Section 18 with respect to actions for infringement, except that Minnesota as administrator of M-P Patents may, in any event, and without the concurrence of Pacific, spend Patent and Research Funds in the defense of such an action in an amount not to exceed the net income of the Patent and Research Fund for the twelve months period immediately preceding the initiation of such an action.

(e) The terms expense or cost of litigation as used in this Section 18 shall mean the actual out-of-



## Plaintiff's Exhibit No. 5—(Continued)

pocket expense incurred in connection with said litigation including reasonable allocation of the compensation of employees of either party engaged in the conduct of such litigation but not including any allowance or apportionment whatsoever with respect to the compensation of any executive of either party or with respect to general overhead or administration expenses of either party. No item of interest shall be included either as to the expense of either party or as to the payment of withheld royalties.

(f) Minnesota agrees that, in the event Pacific shall elect to continue any litigation after the withdrawal of Minnesota as provided in subsection (b) or to proceed alone with litigation as provided in subsection (c), Pacific shall have the right to continue and/or conduct such litigation in the name of Minnesota to the extent necessary to enable Pacific to so continue and/or conduct such litigation.

Section 19. Minnesota and Pacific agree that each will keep full, true and accurate records and books of account with respect to their respective expenditures which are charged as expenses against the Research and Patent Fund as provided in this Agreement. On or before the 20th day of January, April, July and October of each year hereafter Pacific agrees to deliver to Minnesota a written statement setting forth in detail its expenditures, if any, during the preceding quarter calendar year with respect to which it should be reimbursed by the Research and Patent Fund. On or before the

## Plaintiff's Exhibit No. 5—(Continued)

15th day of the second month after each such quarter calendar year, Minnesota, as administrator of the Research and Patent Fund agrees to deliver to Pacific a written statement showing Minnesota's expenditures during such quarter calendar year together with a complete statement showing the income of the Research and Patent Fund, the expenses thereof and the net income or loss thereof, as the case may be. Payment by Minnesota to Pacific of such sums of money as shall be due as reimbursement for expenses and thirty-five (35%) per cent of the net profits if any of the Research and Patent Fund shall accompany each such report. When and if any such report shall show a net loss, Pacific shall pay thirty-five (35%) per cent thereof to Minnesota within fifteen (15) days after the receipt of such report from Minnesota.

Section 20. Minnesota and Pacific reciprocally agree that the records and books of account provided to be kept by each in Section 19 of this Agreement shall be open, during reasonable business hours, for inspection by the other party through Certified Public Accountants (or employees thereof) selected by such party as its duly accredited representatives, to verify the reports and payments based thereon as provided in Section 19 of this Agreement.

Section 21. Minnesota and Pacific each agree to require such of their respective employees as shall be employed in connection with Joint Operations, to execute such employment contracts as are necessary to accomplish the purposes of this Agreement.

## Plaintiff's Exhibit No. 5—(Continued)

Section 22. This Agreement shall be binding upon the parties hereto and their respective successors to substantially the whole of their business. In the event that either Minensota or Pacific desire to sell, transfer and assign its rights under this Agreement, Minnesota or Pacific, as the case may be, shall notify the other in writing of the name of the proposed purchaser and all of the terms and conditions of the proposed sale, transfer, and assignment, and the party to whom the notice is delivered shall have a period of thirty (30) days from the date of the receipt of such notice within which to purchase the right of the other in, to and under this agreement upon the terms disclosed in such notice. In the event that the party receiving such notice fails to purchase the same within such thirty (30) day period, the party giving such notice of such proposed sale may sell its said rights to the party mentioned in such notice and upon the terms stated in such notice.

\* \* \* \* \*

## PLAINTIFF'S EXHIBIT No. 5-A

## Agreement

This Agreement, made and entered into as of the 20th day of September, 1950, by and between Minnesota Mining and Manufacturing Company, a corporation organized under the laws of the State of Delaware, (hereinafter referred to as "Minnesota"); and Pacific Rubber Company, a corporation organized under the laws of the State of California, (hereinafter referred to as "Pacific");

## Plaintiff's Exhibit No. 5-A—(Continued)

Witnesseth:

Whereas, as of the 28th day of August, 1950, Minnesota and Pacific entered into a lease and Operating Contract (hereinafter called "Operating Contract") with the Reconstruction Finance Corporation (hereinafter referred to as "Reserve") to lease and operate Reserve's Synthetic Rubber plant at or near Los Angeles, California; and

Whereas, said Operating Contract provides for the participation by Pacific in the performance thereof;

Now, therefore, in consideration of the premises and the mutual covenants herein contained, it is agreed by and between Minnesota and Pacific as follows:

\* \* \* \* \*

Section 2. Pacific shall assist Minnesota in obtaining certain chemists, engineers and other personnel for full- or part-time employment by Minnesota in the performance of said Operating Contract. It is contemplated that in connection with the Operating Contract a pilot plant may be established and operated by Minnesota for the purpose of improving the quality of Synthetic Rubber, establishing lower production costs and to develop new Synthetic Rubbers. Minnesota and Pacific, when and as necessary and desirable, shall furnish personnel for full- or part-time employment by Minnesota in operating said pilot plant or to serve upon a technical committee to be appointed by Minnesota to advise in the operations of the said pilot plant.



## Plaintiff's Exhibit No. 5-A—(Continued)

Pacific shall assist Minnesota and/or Reserve in obtaining raw materials for the manufacture of Synthetic Rubber under said Operating Contract and shall assist in preparing a study of the postwar needs and uses of Synthetic Rubber products on the Pacific Coast.

\* \* \* \* \*

Section 4. Subject to the provisions of Sections 5 and 6, Minnesota shall pay to Pacific upon receipt thereof from Reserve, thirty-five per cent (35%) of the net proceeds received from Reserve as operating fees, reactivating fees in the event of termination, and all other compensation of every kind and character received by Minnesota for all operations performed under said Operating Contract.

Section 5. It is understood between Minnesota and Pacific that, in carrying out the terms of the Operating Contract, the amount paid by Minnesota for compensation to employees, employees' profit sharing, employees' pension costs and Social Security Taxes might not be reimbursed either in whole or in part by Reserve. The pension costs herein referred to shall be those costs to be incurred under Minnesota's pension plan now in effect. The Profit Sharing Costs shall be those costs to be incurred under Minnesota's Profit Sharing Plan now in effect, or those costs incurred under a special plan instituted for the employees employed under the Operating Contract, the cost of which shall not be greater than Minnesota's plan now in effect.



## Plaintiff's Exhibit No. 5-A—(Continued)

Minnesota shall maintain an account showing the total amount of gross fees received from Reserve and all expenses incurred by Minnesota and held to be non-reimbursable by Reserve.

It is further understood between Minnesota and Pacific that in determining the amount to be paid by Minnesota to Pacific under Section 4 hereof, the expenses incurred by Minnesota as aforesaid which are not reimbursed by Reserve shall be deducted by Minnesota.

Section 6. It is further understood between Minnesota and Pacific that there may be other expenses incurred by Minnesota and/or Pacific, other than those enumerated in Section 5, that are clearly not reimbursable by Reserve under the terms of the Operating Contract and such expenses if incurred by Minnesota shall be deducted in determining the amount to be paid by Minnesota to Pacific under Section 4 hereof and if incurred by Pacific, Pacific shall be reimbursed by Minnesota to the extent of 65% of such expenses, provided, however, that any said expenses must have the written approval of Minnesota or Pacific, as the case may be, before being incurred.

Section 7. To the extent that Minnesota is not reimbursed or held harmless by Reserve under the said Operating Contract, Pacific agrees to indemnify and pay over to Minnesota thirty-five per cent (35%) of any amount paid or expenses incurred by Minnesota (including attorneys fees, court costs and investigation expenses) in settlement or in

## Plaintiff's Exhibit No. 5-A—(Continued)

defense of claims of any kind whatsoever made by third persons for the destruction of property (whether owned by Reserve or others), or injury to, or death of said person or persons arising out of, or in any way connected with the performance of work under the Operating Contract. Minnesota shall notify Pacific with respect to all such claims and shall consult with Pacific with respect to the investigation, defense, settlement, or other disposition of all such claims, provided however, that, in the event of disagreement between Minnesota and Pacific, the decision of Minnesota shall be conclusive and binding upon Pacific. It is further understood and agreed that in the event Reserve directs Minnesota to insure against any of the matters covered by Section 2 of the Operating Contract and Minnesota fails, refuses or neglects so to do, then and in that event Pacific shall have no liability for any such claim or claims as in this Section provided.

Section 8. Pacific agrees that until its liability, if any, under Section 7 above has been satisfied or unless it first secures the written approval of Minnesota, it will not do any of the following acts if immediately thereafter its Net Worth is reduced below \$500,000:

(a) Sell, assign, transfer, lease or convey its property or business except as occasioned in the ordinary conduct of its business; voluntarily liquidate, dissolve, or wind up its affairs, or consolidate or merge with one or more corporations;

Plaintiff's Exhibit No. 5-A—(Continued)

(b) Guarantee any obligation of any other person;

(c) Mortgage, pledge or create any lien on any of its property;

(d) Declare dividends payable in cash or in other property or make any distribution of assets of any kind, provided, however, that it shall not be prevented or restricted from making distributions in shares of stock of Pacific or any acquisitions of shares of stock of Pacific solely in exchange for other shares of stock of Pacific, or any acquisitions of shares of stock of Pacific through application of the proceeds of a substantially concurrent sale of other shares of stock of Pacific; and

(e) Increase the compensation of its officers or directors or stockholders.

Pacific further agrees that it will keep insurance on its property to insure against hazards to the same extent that such insurance is generally maintained by corporations similarly situated.

Pacific agrees that it will make no payment to Oakland Rubber Company, a California Corporation, on account of principal or interest on any debt which is now or may be at any time hereafter owed to Oakland without the written approval of Minnesota.

\* \* \* \* \*

Section 12. The term of this agreement shall be co-extensive with, and limited to, the term of said Operating Contract.

\* \* \* \* \*

(Documents marked Plaintiff's Exhibit 6 in evidence.)

PLAINTIFF'S EXHIBIT No. 6

This Agreement, made and entered into as of this 28th day of August, 1950, by and between Reconstruction Finance Corporation (hereinafter referred to as "Reserve"), Pacific Rubber Company (hereinafter referred to as "Pacific") and Minnesota Mining and Manufacturing Company (hereinafter referred to as "Operator");

Witnesseth:

Whereas, Reserve is the owner of a plant at or near Los Angeles, California, for the manufacture of synthetic rubber of the Butadiene-Styrene Copolymer type; and

Whereas, Reserve and Operator desire to enter into arrangements for the lease, operation and maintenance of said plant for Reserve; and

Whereas, Pacific will participate with Operator in the performance of this agreement in a manner hereinafter stated;

Now, therefore, in consideration of the premises and the mutual covenants herein contained, it is agreed by and between Reserve and Operator as follows:

Section 1. Subject to termination or cancellation as hereinafter provided, Reserve hereby agrees to lease, and does hereby lease (subject to outstanding leases, subleases or other agreements covering said plant, pending termination thereof) the said plant, including the site, buildings, machinery, equipment,



## Plaintiff's Exhibit No. 6—(Continued)

materials and supplies, as the same or any portion or portions thereof exists upon the termination of said outstanding leases, subleases or other agreements and as thereafter at any time constituted and including additions, alterations, replacements, and improvements (hereinafter called the "Plant"), to Operator and Operator does hereby lease the same from Reserve for the term specified in Section 29 hereof. Reserve and Operator each agree, upon the written request of the other, to execute and deliver such additional instruments of lease as may be necessary to carry out the provisions and intentions of this agreement.

It is agreed that Pacific shall, under the terms of an agreement between Operator and Pacific, participate with Operator in the performance of this agreement but it is agreed that Reserve shall deal only with and be responsible only to Operator in the performance hereof and only Operator shall be responsible to Reserve for performance hereunder, unless herein or otherwise expressly provided.

Section 2. So long as this contract remains in full force and effect Operator shall procure and maintain insurance (provided such insurance is obtainable) of such kind and character as Reserve shall direct, and in such companies and in such amounts as shall be satisfactory to or required by Reserve, protecting against loss of or damage to the Plant or against liability to third parties by reason of the activities carried on by Operator pursuant to this contract or against such other con-



## Plaintiff's Exhibit No. 6—(Continued)

tingencies as may be specified by Reserve. The policies evidencing such insurance shall be made payable to Reserve or shall name it as an assured, as may be appropriate, and shall be delivered to Reserve. Any property acquired in replacement of property damaged or destroyed and as a result of application of any insurance proceeds shall be the property of Reserve and so identified and shall be subject to all the terms and provisions of this contract.

Section 3. Operator shall use reasonable care in the maintenance, use and operation of the Plant and shall keep the same in good state of repair. Upon the expiration, termination or concellation of this contract, Operator shall forthwith yield and place Reserve in peaceful possession of the Plant free and clear of any liens and claims other than those resulting from claims against Reserve.

Section 4. Operator agrees to pay to the proper authority, when and as the same become due and payable (after approval by Reserve), all taxes, assessments, and similar charges, which at any time during the term of this contract may be lawfully taxed, assessed, or imposed upon Reserve or Operator with respect to or upon the Plant, or any part thereof. Operator also agrees to pay all claims or charges for or on account of water, light, heat, power and any other service or utility furnished to or with respect to the Plant, or any part thereof.

Section 5. In the maintenance and operation of the Plant and the performance of this contract,

## Plaintiff's Exhibit No. 6—(Continued)

Operator agrees to comply with and give all stipulations and representations required by all applicable Federal, State, municipal and local laws and all applicable rules, orders, regulations, and requirements of any governmental departments and bureaus and all local ordinances and regulations, provided that nothing herein contained shall be construed as preventing Operator from contesting in good faith the validity thereof or whether it has complied therewith. Operator further agrees to indemnify and hold Reserve harmless from any liability or penalty which may be imposed by local or State authority or any department or bureau thereof by reason of any violation or asserted violation by Operator of such laws, rules, orders, ordinances or regulations.

\* \* \* \* \*

Section 8. From and after the date of this contract, Operator, as Agent for Reserve, and for the account and at the expense and risk of Reserve, shall undertake all preparations, including reactivation of the second and third units of the Plant, sometimes referred to in the records of Reserve as plant II and plant III (hereinafter collectively called "Operating Facilities"), necessary for the subsequent operation and maintenance of the Operating Facilities for the production of synthetic rubber of the Butadiene-Styrene Copolymer type meeting specifications promulgated by the Committee on Specifications for Synthetic Rubbers, organized by Reserve, as such specifications may be from

## Plaintiff's Exhibit No. 6—(Continued)

time to time amended (said rubber to be hereinafter called "Synthetic Rubber").

Operator shall during the term of the lease hereunder perform the work necessary to protect, preserve and maintain the first unit of the Plant, sometimes referred to in the records of Reserve as plant I (hereinafter called "Standby Facilities") in accordance with the best accepted industrial practices and in accordance with such instructions as may be issued from time to time by Reserve.

## Section 9. \* \* \* \* \*

(b) Reserve shall reimburse Operator for Operator's costs hereunder, as herein defined, and shall pay to Operator the operating fee hereinafter specified in Section 13 hereof.

Section 10. For the purposes of this contract, Operator's costs hereunder shall mean all costs and expenses of whatsoever kind or character incurred by Operator in connection with the aforesaid reactivation, management, operation, repair, protection, preservation and maintenance of the Plant and the manufacture and production of Synthetic Rubber, including, but without limitation, the following:

(a) All salaries and wages, whether full-time or part-time, and including compensation for overtime, for work performed at the Plant or elsewhere, both in connection with preparations necessary for the operation of the Operating Facilities and in connection with the management, operation,

## Plaintiff's Exhibit No. 6—(Continued)

repair, protection, or maintenance of the Plant; all salaries and fees for services of technical, consultant-engineering or other professional experts, whether performed on or off the Plant site and whether on a full-time or part-time basis; all extra compensation paid to employees engaged in the performance of this contract and all discontinuance wages paid to such employees; the amount directly chargeable to Operator for all group insurance, retirement-income plan and all other welfare and employee-relation plans maintained by Operator for the benefit of employees engaged in the performance of this contract; and an equitably proportionate share of Operator's cost of all welfare and other employee-relation plans maintained by Operator for the benefit of its employees generally.

It is understood that in the event the full time of any employee of Operator is not applied to the performance of this contract, the wages or salary of such employee shall be included herein only in proportion to the actual time applied to the performance of this contract. It is further understood that the payment of any extra compensation or discontinuance wages and any expenditures, pursuant to the maintenance of welfare or other plans for the benefit of employees of Operator, shall be included herein only in so far as the payments or expenditures are consistent with Operator's general employee-relation policies throughout its organization, or are incurred pursuant to an agreement made as a result of collective bargaining with rep-



## Plaintiff's Exhibit No. 6—(Continued)

representatives of Operator's employees, or are expressly authorized in writing by Reserve, it being intended that employees of Operator in the Plant shall be treated no less favorably than other employees of Operator whose services are not used in the performance of this contract.

(b) The cost of all facilities, machinery, tools, dies, jigs, office equipment, supplies, manufacturing aids, alterations, improvements, replacements, and additions to the manufacturing buildings or equipment facilities connected therewith, required for the efficient performance of this contract and for which Operator is not otherwise reimbursed; and the cost of all maintenance and repairs including the cost of replacing, repairing or reconditioning any of the machinery or equipment comprising the Plant, damaged or destroyed, but only to the extent that the damage to or destruction of said machinery or equipment is not covered by insurance and only to the extent that the replacing, repairing or reconditioning is necessary to the efficient operation or maintenance of the Plant.

It is hereby understood that title to any and all property of whatever character, the cost of which is paid by Reserve pursuant to this subsection (b) of this Section 10, shall vest directly in Reserve, and that title to such property shall in no event vest in Operator.

It is further understood that the cost of repairs, if performed in repair shops maintained by Operator, shall include an appropriate charge to reim-



## Plaintiff's Exhibit No. 6—(Continued)

burse Operator for overhead expense incurred by Operator in maintaining such repair shops.

It is hereby further understood that in the acquisition, purchase and installation of any machinery, equipment, materials, or supplies in connection with any alterations, improvements or betterments of, or additions to, the Plant, or in connection with any replacements made in the Plant, and in the negotiation, execution and supervision of all contracts with third parties in connection therewith, Operator shall act as Agent for and on behalf of Reserve; provided, however, that as a condition precedent to reimbursement under the terms of this subsection (b) any such expenditure for the acquisition, purchase or installation of machinery, equipment, materials or supplies in connection with any alterations, improvements or betterments of, or additions to, the Plant involving more than One Thousand Dollars (\$1,000) shall be first approved in writing by Reserve; and provided, further, that as a condition precedent to reimbursement under the terms of this said subsection (b), any such expenditure for the acquisition, purchase or installation of machinery, equipment, materials or supplies in connection with any replacement in the Plant involving more than Five Thousand Dollars (\$5,000) shall be first approved in writing by Reserve.

\* \* \* \* \*

(d) The amount of all premiums or other costs of any bonds or insurance, including public liability, employers' liability, property damage, workmen's

## Plaintiff's Exhibit No. 6—(Continued)

compensation, fidelity, fire, theft, burglary or other insurance, which Reserve may specifically require Operator to carry under this contract. In the event Reserve and Operator shall cover workmen's compensation risks on a self-insurance basis, such arrangements shall be effectuated in a manner mutually satisfactory to the parties hereto.

\* \* \* \* \*

(h) The cost of constructing, equipping and operating any pilot plants for the experimental operation of any process or processes used or intended to be used in the production of Synthetic Rubber, including the cost of all materials used or consumed in such experimental operation; provided, however, that such cost shall be included only to the extent approved in advance or ratified in writing by Reserve in accordance with arrangements mutually satisfactory to Reserve and to Operator.

(i) The cost of conducting research, experimental, laboratory and developmental work, including all costs under contracts or subcontracts for technical services or consultant advice; provided, however, that such cost shall be included only to the extent approved in advance or ratified in writing by Reserve in accordance with arrangements mutually satisfactory to Reserve and to Operator.

\* \* \* \* \*

Section 12. It is understood that in the performance of this contract, Operator is acting as Agent for Reserve, for the account and at the expense and risk of the latter, and that, accordingly,

## Plaintiff's Exhibit No. 6—(Continued)

Operator shall in no event be liable for, but shall be held harmless by Reserve against any damage to or loss or destruction of property (whether owned by Reserve or others) or any injury to or death of persons, in any manner, arising out of or in connection with the work hereunder, unless it be shown to have been caused directly by bad faith or wilful misconduct on the part of any officer of Operator or any representative of Operator having supervision and direction of the Plant as a whole or of the Operating Facilities or of the Standby Facilities, acting within the scope of his authority and employment, or unless it results from the failure of Operator to carry such insurance coverage as Operator may be required to carry under this contract. It is further understood that raw materials of the type required for the production of Synthetic Rubber are subject to an element of loss due to shrinkage, spoilage, waste and the like, in the course of storage and processing.

\* \* \* \* \*

## Section 21. \* \* \* \* \*

(e) Any breach or violation of any of the foregoing representations and stipulations shall render the party responsible therefor liable to the United States of America for liquidated damages, in addition to damages for any other breach of this contract, in the sum of Ten Dollars (\$10) per day for each male person under sixteen (16) years of age or each female person under eighteen (18) years of age, or each convict laborer knowingly employed in the

## Plaintiff's Exhibit No. 6—(Continued)

performance of this contract, and a sum equal to the amount of any deductions, rebates, refunds, or underpayment of wages due to any employee engaged in the performance of this contract; and, in addition, the agency of the United States entering into this contract shall have the right to cancel same and to make open-market purchases or enter into other contracts for the completion of the original contract, charging any additional cost to the original contractor. Any sums of money due to the United States of America by reason of any violation of any of the representations and stipulations of this contract as set forth herein may be withheld from any amounts due on this contract or may be recovered in a suit brought in the name of the United States of America by the Attorney General thereof. All sums withheld or recovered as deductions, rebates, refunds, or underpayments of wages shall be held in a special deposit account and shall be paid, on order of the Secretary of Labor, directly to the employees who have been paid less than minimum rates of pay as set forth in such contracts and on whose account such sums were withheld or recovered: Provided, That no claims by employees for such payments shall be entertained unless made within one (1) year from the date of actual notice to Operator of the withholding or recovery of such sums by the United States of America.

\* \* \* \* \*

Section 25. Reserve shall have the right to ter-



## Plaintiff's Exhibit No. 6—(Continued)

minate this contract at any time, upon giving to Operator ten (10) days' written notice of such termination, and in the event of such termination by Reserve, Operator shall be reimbursed by Reserve for all costs, expenses and losses sustained or incurred by Operator in anticipation of performance of this contract and Reserve shall be liable for any loss sustained by Operator on all such obligations, commitments and claims as Operator may have undertaken or incurred in connection therewith as of the date of such termination. Further, in the event Reserve so terminates within one year of the commencement of the term of this contract, Operator shall be entitled to receive from Reserve an amount equal to the fee prescribed by Reserve's Manual of Administrative Procedure for the Labor Supply form of contract based upon an estimate related to the aforesaid reactivation to be mutually agreed upon within thirty (30) days from the date of actual execution of this contract.

Operator shall have the right to terminate this contract during the term hereof upon not less than ninety (90) days' written notice to Reserve.

\* \* \* \* \*

Section 27. Operator shall not sell, assign, or pledge its interests under this contract, nor any of its rights, powers, privileges, duties or obligations hereunder, nor sublease or permit the use by others of any part of the Plant, without the prior written consent of Reserve. Reserve may transfer the Plant and may assign its interest under this contract to



## Plaintiff's Exhibit No. 6—(Continued)

any other branch of the Government, and upon such transfer and assignment such other branch of the Government shall acquire all the rights, powers, and privileges of Reserve hereunder and shall be bound by all the duties and obligations of Reserve hereunder, and Reserve shall thereby cease to have any rights, powers, privileges, duties or obligations hereunder, it being expressly understood that any such transfer and assignment by Reserve of its interest in this contract to any other branch of the Government shall be subject to all the rights, powers and privileges of Operator hereunder and shall be conditioned upon such assignee's assuming all duties and obligations of Reserve hereunder.

\* \* \* \* \*

Section 29. The term of this contract, in the absence of and subject to a prior cancellation or termination as hereinabove provided, shall be for a period commencing 12:01 a.m., August 28, 1950 and ending 11:59 p.m., June 30, 1952.

\* \* \* \* \*

Section 31. Reserve agrees that, notwithstanding any other provision of this contract, the summation of all liabilities of Operator arising out of any provision of this contract or any operations conducted thereunder shall in no event exceed the total amount of One Million Dollars (\$1,000,000).

\* \* \* \* \*

(Testimony of John Condrey.)

Mr. Clark: I wish to revert now to your function and performance as secretary of the Pacific Rubber Company, Mr. Condrey. The minute books were in your custody, were they not, from the date of the organization of the Pacific Rubber Company, at all times after that, down to and including the present time?     A. In my personal custody?

Q. Yes, as secretary of the corporation they were, were they not? [36]

A. No, they were not in my possession.

Q. Where were they?

A. Well, they were used in the deposition proceedings in connection with this case that were held. They were out of my possession and——

Q. Those were the only occasions when they were out of your possession, Mr. Condrey?

A. Up to the present time?

Q. Yes. From the very organization of the Pacific Rubber Company down to the present time, how many times have the minute books or when were the minute books out of your personal custody as secretary of the corporation?

A. I wouldn't remember specifically.

Q. Were they at all times——

A. Pardon me?

Q. Were they at all times in your office subject to your control?

A. Not at all times in my office.

Q. Well, where were they?

A. Well, they were in the office of the attorneys at which the depositions were conducted. [37]

(Testimony of John Condrey.)

Q. Was there a meeting of the Board of Directors held on January 15, 1951 — meeting of the Board of Directors of Pacific Rubber Company?

A. January 15, 1951? [39]

Q. 1951. A. Yes.

Q. Yes. Now, look at the minutes in the book there. Find the minutes there. You don't need to read them.

A. No.

Mr. Clark: May I have this marked for identification?

Mr. Dinkelspiel: What is it?

Mr. Clark: I will show it to you in a minute. May I have the instrument marked for identification?

The Court: It may be marked Exhibit 7 for identification.

(Document marked Plaintiff's Exhibit 7 for identification.)

The Witness: What was the question?

Q. (By Mr. Clark): I just asked you to turn to it.

A. Oh.

Q. There was a meeting on January 15th, 1951?

A. That is correct.

Q. What was it, regular or special meeting?

A. It was a regular meeting.

Q. All right. We don't need to read the minutes. I will take the minute book in just a moment.

Will you state whether or not that is your signature on that letter? You don't need to read the letter. Is that your signature?

A. That is my signature. [40]

\* \* \* \* \*

(Testimony of John Condrey.)

Q. Please examine the letter to which you have attached your signature, letter dated January 26, 1951, being the first instrument in Plaintiff's Exhibit 7 for identification.

Just look at the letter a moment. Have you read it?     A. Yes. [41]

Q. Now, examine every instrument under that letter, please, and then I want to ask you a general question.

That is your signature also, isn't it, on the letter dated January 26th?

A. That is my signature.

Q. Yes. The first letter in the file under the clip here, identified as Plaintiff's Exhibit 7 for identification, is addressed to Mr. Glen A. Taylor, Vice President, Robbins Tire & Rubber Company, Inc., Tuscumbia, Alabama, is it not?     A. Yes.

Q. The second letter is addressed on the same date to Robbins Tire & Rubber Company, Tuscumbia, Alabama, attention Mr. Poncet Davis, President, is that correct?

A. That is correct.

Q. Now, you enclosed with this first letter addressed to Glen A. Taylor certain documents of waiver and consent, an original and one copy, didn't you?     A. Yes.

Q. A copy of the minutes?     A. Yes.

Q. Did you make a copy of the minutes?

A. Yes.

Q. You knew when you enclosed the copy that it was a correct copy, didn't you?

(Testimony of John Condrey.)

A. When I enclosed it? [42]

\* \* \* \* \*

Mr. Clark: May I have the last question read, if your Honor please?

The Court: Yes.

(Thereupon the Reporter read: "Q. You knew when you enclosed the copy that it was a correct copy, didn't you?")

A. That is right.

Q. (By Mr. Clark): That it was a correct copy that you enclosed, and you also enclosed a certified copy of a resolution and that was a correct copy?

A. That is correct.

Q. All right. And this certified copy of the resolution, this thing marked at the top, the last document in the file, marked Plaintiff's Exhibit 7, entitled "Certified Copy of Resolution of Board of Directors, Pacific Tire & Rubber [43] Company," is also a correct copy? A. It is.

Mr. Clark: I offer these in evidence, if your Honor please.

Mr. Dinkelspiel: Your Honor please, we object to the introduction as incompetent, irrelevant and immaterial; as insufficient foundation; not within the issues of this case.

Before pursuing my objection further, I would like to ask Mr. Clark one question, if I may have the exhibit, and I think it's a fair question to ask of counsel.

Attached as part of this group of documents is, first, a letter to Mr. Glen Taylor referring to,



(Testimony of John Condrey.)

among other things, a waiver and consent to the holding of the meeting.

Attached, too, as a part of this exhibit, is what appears to be such a consent on what is usually the stationery of a minute book, which I am sure will fit in this minute book, and I am going to ask Mr. Clark how he got this.

Mr. Clark: We certainly didn't steal it out of the minute book.

Mr. Dinkelspiel: No, but where did it come from? I am not suggesting that you stole it.

Mr. Clark: It came from Mr. Taylor's files.

Mr. Dinkelspiel: From Mr. Taylor's files?

Mr. Clark: Yes. [44]

\* \* \* \* \*

The Court: Well, for the moment I will admit them. They are actions by the Secretary of the corporation, I take it. I haven't looked at them. [45]

#### PLAINTIFF'S EXHIBIT No. 7-A

Pacific Tire & Rubber Company

Factory and General Offices

4901 East 12th Street

Oakland 1, California

January 26, 1951

Mr. Glenn A. Taylor, Vice President

Robbins Tire and Rubber Co., Inc.

Tuscumbia, Alabama

Dear Glenn:

To satisfy a technical requirement of the depository bank it is necessary that they be furnished with a Certified Copy of Resolution of Board of

Directors of Pacific Rubber Company authorizing endorsement of checks and drafts made payable to Pacific Rubber Company, so that they may properly be deposited into the account of "C. L. Cameron, Trustee for John B. Condrey and Robbins Tire and Rubber Company, Incorporated."

To comply therewith it was necessary that a Directors Meeting be held on January 15, 1951. Enclosed are the following documents appertaining thereto:

Waiver and Consent (original and copy)

Minutes (copy)

Certified Copy of Resolution (copy)

Your signing and returning the original Waiver and Consent will be appreciated. Copies of all documents are to be retained for your file.

It certainly was a pleasure to meet you during the few hours you were here January fifth. It is unfortunate that everyone was so busy and the time was so short that it was impossible for you to become personally acquainted with several other members of the Pacific organization. However, we all hope you may be able to visit us again.

Best personal regards,

/s/ JOHN B. CONDREY.

JBC/lp

Encs.

Airmail

PLAINTIFF'S EXHIBIT No. 7-B

Waiver and Consent to the Holding of a Special  
Meeting of the Board of Directors of Pacific  
Rubber Company

We, the undersigned, being all of the directors of Pacific Rubber Company, a California Corporation, desiring to hold a special meeting of the Board of Directors of said corporation on January 15, 1951 at the hour of 10:00 o'clock A.M. for the purpose of adopting a resolution authorizing the deposit of accounts receivable funds of this corporation with American Trust Company, Fruitvale Branch, Oakland, California, do hereby waive notice of said meeting at Oakland, California on the 15th day of January, 1951 at 10:00 o'clock A.M. for the purpose as above set forth and for the purpose of conducting any other business which may come before the said meeting, and further agree that any business transacted at said meeting shall be as valid and legal and of the same force and effect as though said meeting were held after notice duly given.

Witness our signatures this 14th day of January, 1951.

/s/ W. H. DeSellem

/s/ Glenn A. Taylor

/s/ John Condrey

PLAINTIFF'S EXHIBIT No. 7-C

Waiver and Consent to the Holding of a Special  
Meeting of the Board of Directors of Pacific  
Rubber Company

We, the undersigned, being all of the directors of Pacific Rubber Company, a California Corporation, desiring to hold a special meeting of the Board of Directors of said corporation on January 15, 1951 at the hour of 10:00 o'clock A.M. for the purpose of adopting a resolution authorizing the deposit of accounts receivable funds of this corporation with American Trust Company, Fruitvale Branch, Oakland, California, do hereby waive notice of said meeting at Oakland, California on the 15th day of January, 1951 at 10:00 o'clock A.M. for the purpose as above set forth and for the purpose of conducting any other business which may come before the said meeting, and further agree that any business transacted at said meeting shall be as valid and legal and of the same force and effect as though said meeting were held after notice duly given.

Witness our signatures this 14th day of January, 1951.

/s/ W. H. DeSellem

/s/ Glenn A. Taylor

/s/ John Condrey

PLAINTIFF'S EXHIBIT No. 7-D-E

Minutes of Special Meeting of Board of Directors  
of Pacific Rubber Company

Pursuant to the foregoing Waiver and Consent, a Special meeting of the Board of Directors was held on the 15th day of January 1951, at the hour of 10:00 o'clock A.M. in the office of Pacific Tire & Rubber Company, located at 4901 East 12th Street, Oakland, California.

Wesley H. DeSellem, Vice President of the Corporation, acted as Chairman of the Meeting, and John B. Condrey, acted as Secretary.

The Chairman called the meeting to order and instructed the Secretary to call the roll. Present were Wesley H. DeSellem and John B. Condrey. G. A. Taylor was absent.

The Chairman then announced that the meeting was held for the purpose of adopting a resolution authorizing the deposit of accounts receivable funds of this corporation into the account established at American Trust Company, Fruitvale Branch, Oakland, California in the name of C. L. Cameron, Trustee for John B. Condrey and Robbins Tire and Rubber Company, Incorporated. Upon motion duly made, seconded and unanimously carried the following resolution was adopted:

“Whereas, this corporation filed its Certificate to Wind Up and Dissolve its Affairs with the Secretary of the State of California on January 10, 1951; and

“Whereas, the company proposes to transfer all



of its assets by way of liquidation to its shareholders, namely John B. Condrey and Robbins Tire and Rubber Company, Incorporated; and

“Whereas, John B. Condrey and Robbins Tire and Rubber Company have appointed C. L. Cameron as their Trustee to receive money for their account and to disburse the same in liquidation of Pacific Rubber Company’s accounts payable; and

“Whereas, this company will receive from time to time a great number of checks and drafts as accounts receivable of this company; and

“Whereas, this company desires to deposit said checks and drafts to the account of C. L. Cameron, Trustee for John B. Condrey and Robbins Tire and Rubber Company, Incorporated;

“Now Therefore, Be It Resolved, that any two officers of this company be and they are hereby authorized to endorse all checks and drafts made payable to this company to the order of C. L. Cameron, Trustee for John B. Condrey and Robbins Tire and Rubber Company, Incorporated.

“Be It Further Resolved, that the Secretary of this corporation be and he is hereby authorized to deliver a certified copy of this resolution to the American Trust Company, Fruitvale Branch, Oakland, California.”

There being no further business to come before this meeting, upon motion duly made, seconded and unanimously carried, the meeting was adjourned.

/s/ W. H. DeSellem,  
Chairman.

/s/ John Condrey,  
Secretary.

PLAINTIFF'S EXHIBIT No. 7-F-G

Certified Copy of Resolution of Board of Directors  
of Pacific Rubber Company

At a special meeting of the Board of Directors of Pacific Rubber Company, duly convened at 4901 East 12th Street, Oakland, California, on the 15th day of January, 1951, at the hour of 10 o'clock A.M., the following resolution was adopted:

“Whereas, this corporation filed its Certificate to Wind Up and Dissolve its Affairs with the Secretary of State of the State of California on January 10, 1951; and

“Whereas, the company proposes to transfer all of its assets by way of liquidation to its shareholders, namely John B. Condrey and Robbins Tire and Rubber Company, Incorporated; and

“Whereas, John B. Condrey and Robbins Tire and Rubber Company have appointed C. L. Cameron as their Trustee to receive money for their account and to disburse the same in liquidation of Pacific Rubber Company's accounts payable; and

“Whereas, this company will receive from time to time a great number of checks and drafts as accounts receivable of this company; and

“Whereas, this company desires to deposit said checks and drafts to the account of C. L. Cameron, Trustee for John B. Condrey and Robbins Tire and Rubber Company, Incorporated;

“Now Therefore, Be It Resolved, that any two officers of this company be and they are hereby authorized to endorse all checks and drafts made pay-

able to this company to the order of C. L. Cameron, Trustee for John B. Condrey and Robbins Tire and Rubber Company, Incorporated.

“Be It Further Resolved, that the Secretary of this corporation be and he is hereby authorized to deliver a certified copy of this resolution to the American Trust Company, Fruitvale Branch, Oakland, California.”

The undersigned Secretary of Pacific Rubber Company hereby certifies that the foregoing is a full, true and correct copy of the resolution of the Board of Directors, adopted by the Board at a meeting of said Board of Directors held on the date, time and place above specified and said resolution has not been modified or rescinded.

In Witness Whereof, I have hereto set my hand and the corporate seal of the corporation this 15th day of January, 1951.

/s/ John Condrey,  
Secretary.

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PLAINTIFF'S EXHIBIT No. 7-H

Pacific Tire & Rubber Company  
Factory and General Offices

1901 East 12th Street                      Oakland 1, California  
January 26, 1951

Robbins Tire and Rubber Company, Inc.  
Tuscumbia, Alabama  
Attention: Mr. Poncet Davis, President  
Gentlemen:

In compliance with paragraph 11 of the Agree-

ment dated January 7, 1951 between Edwin W. Pauley, Poncet Davis, Trustee, and Inland Rubber Corporation, Parties of the First Part, and John B. Condrey and Robbins Tire and Rubber Company, Incorporated, Parties of the Second Part, enclosed herewith is duplicate original certified copy of resolution called for in said paragraph, to be executed and delivered by Pacific Tire & Rubber Company to Robbins Tire and Rubber Company, Incorporated.

The aforementioned paragraph recites:

“On the Closing Date the Corporation shall accept this agreement and deliver to Sellers a certified copy of the resolution of its Board of Directors, authorizing this agreement. Thereupon the Corporation shall become and be a party to this Agreement.”

Yours very truly,

Pacific Tire & Rubber Company  
/s/ John B. Condrey,  
Secretary.

JBC/lp

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PLAINTIFF'S EXHIBIT No. 7-I

Certified Copy of Resolution of Board of Directors  
of Pacific Tire & Rubber Company

At a special meeting of the Board of Directors of Pacific Tire & Rubber Company, duly convened in Suite 808 of the St. Francis Hotel, Powell and Geary Streets, San Francisco, California, on the 15th day of January, 1951, at the hour of 4:30

o'clock P.M., the following resolution was adopted:

“Whereas, on January 7, 1951, Edwin W. Pauley, Poncet Davis, Trustee for Poncet Davis, Jr. and Katharine “Trinka” Davis, and Inland Rubber Corporation, as First Parties, and John B. Condrey and Robbins Tire and Rubber Company, as Second Parties, entered into an agreement whereby First Parties agreed to form a corporation to purchase certain assets of Pacific Rubber Company; and

“Whereas, Second Parties, as the sole stockholders of Pacific Rubber Company, agreed to liquidate Pacific Rubber Company and to sell and dispose of certain of its assets to the new company to be formed; and

“Whereas, the new company to be formed, when formed, agreed to purchase said assets therein enumerated; and

“Whereas, this corporation is the corporation contemplated under the terms of said agreement;

“Now Therefore, Be It Resolved, that the Vice President and Secretary of this corporation be and they are hereby authorized to execute said agreement of January 7, 1951, for and on behalf and in the name of this corporation.

“Be It Further Resolved, that the Secretary of this corporation be and he is hereby authorized to prepare and deliver to John B. Condrey, Robbins Tire and Rubber Company, Incorporated, and to such other persons as may be entitled to a copy thereof, a certified copy of this resolution.”

The undersigned Secretary of Pacific Tire & Rubber Company hereby certifies that the foregoing



is a full, true and correct copy of the resolution of the Board of Directors adopted by the Board at a meeting of said Board of Directors held on the date, time and place above specified and said resolution has not been modified or rescinded.

In Witness Whereof, I have hereto set my hand and the corporate seal of the corporation this 15th day of January, 1951.

[Seal]     /s/ John B. Condrey,  
Secretary.

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\* \* \* \* \*

Q. (By Mr. Clark): Now, isn't this form of waiver to Mr. Taylor with that letter of January 26, 1951?     A. That is right.

Q. And you also sent him a copy of what is purported to be the action taken by the corporation at the meeting, notice of which you wished him to waive subsequently on the minute book; is that correct?     A. That is correct.

Q. All right. Now, the waiver says that it is a waiver and consent to the holding of a special meeting of the board of directors of the Pacific Rubber Company. I have read that correctly, isn't that right?     A. I believe you have.

Q. Is there any doubt in your mind? You say you believe I have. [47]

\* \* \* \* \*

Q. (By Mr. Clark): Waiver for a special meeting, wasn't it? Waiver of notice for a special meeting?     A. That's correct.

Q. All right. Now, would you look at the min-

(Testimony of John Condrey.)

utes of the meeting of January 15th as they appear in the minute book, which you say is correct, and tell us whether the meeting of January 15th, was regular or special, according to the minute book?

A. According to the minute book, it was regular.

\* \* \* \* \*

Q. (By Mr. Clark): And the minute book is correct, is that right? [48] A. It is.

Q. Why did you send Mr. Taylor a waiver of a special meeting, notice of a special meeting, then?

A. I couldn't answer that question because I don't remember.

Q. You don't remember why you did it?

A. No.

Q. Well, are they both correct? Is it a waiver of notice for a special meeting? [49]

\* \* \* \* \*

Q. (By Mr. Clark): Do you know the difference between a regular and a special meeting of the board of directors of a corporation? I don't want to confuse you. That's the reason I ask you the question. A. I believe I do.

Q. Well, would you mind stating your knowledge of it?

A. Well, a regular meeting would be a meeting that was provided for in either the bylaws or by resolution of the board of directors, on a certain specific date, wherein a certain specific date was set for taking up affairs of the corporation.

A special meeting would be a meeting that would

(Testimony of John Condrey.)

have to be called of necessity at some other time to perform some other necessary act that could not wait or could not be held over until the regular meeting date. [50]

Q. Well, let me see if I can clarify that; and you tell me if this conforms to your understanding:

A regular meeting of a board of directors is a meeting for which generally no notice need be given to the members of the board. A special meeting is a meeting for which notice must be given.

Mr. Dinkelspiel: I object to that.

Q. (By Mr. Clark): Is that your understanding?

Mr. Dinkelspiel: He has already answered the question.

Mr. Clark: I think he has answered it in exactly that way, but I wanted to shorten it a little.

A. (By the Witness): If it were provided in the bylaws and a meeting of the board of directors that no notice be given, that is my understanding, that it would be without notice. \* \* \* \* \* [51]

Q. Do you know whose handwriting that is above the word "Special" in what purports to be a certified copy of Resolution of the Board of Directors of Pacific Rubber Company?

A. No, I do not. I do not know.

Q. Has this minute book, with the exception of the times that it has been in the hands of Counsel who were taking a [53] deposition, been in Oakland in the office of the Pacific Tire & Rubber Company or Pacific Rubber Company, one or the other,

(Testimony of John Condrey.)

always? A. (No response.)

Q. Has it ever been in Los Angeles?

A. I don't know whether, to my knowledge whether it has been in Los Angeles.

Q. Well, who has the custody of it?

A. I have.

Q. Did you ever send it to Los Angeles?

A. My recollection—to my best recollection, I can't ever remember sending that to Los Angeles.

Q. Did you ever permit anybody to take it to Los Angeles? A. Not to my knowledge.

Q. What do you mean, not to your knowledge or not to your recollection?

A. I would like to answer the question.

Q. Go ahead.

A. That minute book along with other exhibits which I was required to bring into this court by service upon me, why, along with other information that pertained to this case was turned over to my Counsel.

Q. I understand that, of course.

A. And to my knowledge they had no reason to take it to Los Angeles, but I do not know that.

Q. You mean turned over for the purpose of this case? A. Yes, that's right.

Q. Apart from that. I am not raising any question of what your counsel did.

A. If that will answer your question, that's it.

Q. You never permitted anybody other than a lawyer to take the minute book to Los Angeles?

A. No.

(Testimony of John Condrey.)

Q. Do you recollect that you ever permitted any lawyer to take the minute book to Los Angeles?

A. Not to my knowledge. Not under my instructions.

Q. Not to your recollection, is that what you mean?      A. Not to my recollection.

Q. If it was done, you had no knowledge of it or present recollection?

A. That's right. [55]

\* \* \* \* \*

Q. Where is the minute book containing those minutes? Is it in the back?

A. Well, these run up——

Q. Oh, I see.

A. That is this minute book I am talking about. Now, there was a period on or about the early part of January, 1951, that that book could have been in Los Angeles at the time of the formation of the new corporation and new partnership.

Q. Yes?

A. And it would have been in Los Angeles at that time.

Q. Can you find the minutes of the organization meeting of that board of directors?

A. The organization meeting prior to my becoming a director?

Q. Yes. Can you find them in here?

A. Yes.

Q. First meeting of the board of directors, is that it?      A. Yes, that is correct.

Q. Can you find in the minute book any place



(Testimony of John Condrey.)

where regular meetings are authorized to be held? Maybe that will shorten it.

Mr. Dinkelspiel: Will you take my assistance on that, Mr. Clark?

Mr. Clark: Yes. Was that done at the first meeting? [56]

Mr. Dinkelspiel: Well, there is a by-law on the subject, and then there was an authorization and then there was a resolution.

Mr. Clark: The by-laws don't show it.

Mr. Dinkelspiel: Let's get the by-laws.

Mr. Clark: Well, let's get the minutes first. I would like to have this my way.

Mr. Dinkelspiel: The minutes of the 29th day of December, 1948, Mr. Clark.

Mr. Clark: Now, if your Honor please, I should like to offer and I do offer in evidence—I don't want to offer this original, but may we have it understood that we can——

Mr. Hedges: We will furnish a photostatic copy.

Mr. Clark: Photostatic copy of the first meeting of the Board of Directors of Pacific Rubber Company.

Mr. Hedges: Mr. Dinkelspiel has it in his hand there.

Mr. Clark: May we offer it in evidence?

Mr. Dinkelspiel: Yes. We have no objection.

The Court: That is the minutes of the first meeting——

Mr. Clark: Of Pacific Rubber Company. Min-

(Testimony of John Condrey.)

utes showing it was held on the 29th of December, 1948, at ten o'clock.

The Court: It may be admitted and marked Exhibit 8.

(Minutes admitted in evidence and marked Plaintiff's Exhibit 8.) [57]

\* \* \* \* \*

Mr. Clark: Is that the only place in the minutes of Pacific Rubber Company where there is authorization for regular meetings?

Mr. Dinkelspiel: That's the only place in the minutes [58] of Pacific Rubber Company so authorizing. But I also would like to have in the evidence the Article 3, Section 5, of the By-Laws that may be the basis for this authorization.

Mr. Clark: I have no objection to that and will offer them myself, if your Honor please.

Mr. Dinkelspiel: If you would like to offer them, they are here. The by-laws are here.

Mr. Clark: These are the entire by-laws?

Mr. Hedges: That is right.

Mr. Clark: All right.

We wish to put that in, if your Honor please, the by-laws as a whole. [59]

\* \* \* \* \*

(Agreement admitted in evidence as Plaintiff's Exhibit 12.) [60]

[Printer's Note: Exhibit 12 is a duplicate of Exhibit A attached to Answer of Bay Rubber Co. at pages 48-51.]

\* \* \* \* \*

(Copy of agreement marked Plaintiff's Exhibit 13 and received in evidence.)

[Printer's Note: Exhibit 13 is a duplicate of Exhibit B attached to the Answer of the Bay Rubber Company at pages 51-60.]

\* \* \* \* \*

PLAINTIFF'S EXHIBIT No. 14

January 15, 1951.

Mr. C. L. Cameron  
717 North Highland Avenue  
Los Angeles 38, California

Dear Sir:

We hereby appoint you to act as our Agent to collect and receive all payments due us from the Pacific Tire & Rubber Company under the terms of that certain Agreement dated January 7, 1951.

Upon receipt of such funds, you are authorized to deposit them in a Bank Account to be opened by you in the American Trust Company. [J. C. and G. B.]\* The Bank Account shall be established in the name of C. L. Cameron, Trustee for John B. Condrey and Robbins Tire and Rubber Company, Incorporated.

From the funds so received by you for our account, you are authorized to liquidate, as quickly and expediently as possible, all Bank Loans, Accounts Payable and other indebtedness of Pacific Rubber Company, of which we are the sole stockholders.

---

\*[Words in Brackets are struck out in copy and initialed J. C. and G. B.]

The balance remaining in your hands after the payment of all accounts shall be distributed to us as follows: 58.597% to John Condrey, 41.403% to Robbins Tire and Rubber Company, Incorporated.

In case of your death, or other legal disability, while this Agreement is in effect, the American Trust Company shall be substituted in your place.

This Agreement shall constitute an Agency coupled with an interest and shall be irrevocable.

Delivery of a duplicate-original of this letter to Pacific Tire & Rubber Company will be their authority to make the payments contemplated under the Agreement of January 7, 1951, directly to you.

Very truly yours,

/s/ JOHN CONDREY

[Seal]     ROBBINS TIRE AND RUBBER  
COMPANY, INCORPORATED

/s/ By GEORGE BOUCHARD,  
Authorized Agent.

Accepted:

/s/ C. L. CAMERON

\* \* \* \* \*

Q. Will you turn to the minutes of any other meeting of the board of directors that was held on that date, January 15th, 1951? You opened it at a page here entitled "Minutes of Regular Meeting of Board of Directors of Pacific Rubber Company," the first paragraph of which reads—this, Your Honor, is merely to identify the page that begins the minutes.

(Testimony of John Condrey.)

"The regular meeting of the board of directors of Pacific Rubber Company was held on the 15th day of January, 1951, at the hour of 10:30 o'clock a.m. in the offices of the corporation located at 4901 East 12th Street, Oakland, California." There were two directors present at that meeting.

Is that correct?            A. That's correct. [65]

Q. Wesley H. DeSellem, who acted as chairman of the meeting, and John Condrey, yourself, secretary?            A. Right.

Q. You were present, of course?

A. That's right.

Q. And so was DeSellem?            A. That's right.

\* \* \* \* \*

Q. (By Mr. Clark): The minutes of another meeting on January 15th, 1951 which you have shown me, which you show me, are entitled "Minutes of Regular Meeting of Board of [66] Directors, Pacific Rubber Company," the first paragraph reads:

"A regular meeting of the board of directors of Pacific Rubber Company was held on the 15th day of January, 1951, at the hour of 10:00 o'clock a.m. in the office of Pacific Tire & Rubber Company, located at 4901 East 12th Street, Oakland, California."

Now, those were the only meeting of the board of the directors that were held on January 15th, 1951?            A. I believe they were.

Q. Go ahead.            A. That is not correct.

Q. What is that?



(Testimony of John Condrey.)

A. No, that is not correct.

Q. Were there more than two meetings of the board of directors held on January 15th, 1951?

A. No. That is correct; there were just two meeting. They were 10:00 and 10:30.

Q. All right. Let's get that clear in the record. There were only two meeting of the board of directors of Pacific Rubber Company held on January 15th, 1951, one according to the minutes, at 10:00 o'clock and the other, according to the minutes, at 10:30 in the morning; is that right?

A. That's correct.

Q. All right. Will you examine the last paragraph of the minutes of the meeting of that date which are said to have [67] in the minutes in the first paragraph to have been held at 10:00 o'clock a.m. Examine the last paragraph.

A. 10:00 o'clock a.m.?

Q. That paragraph reads as follows, does it not—I quote:

“There being no further business to come before this meeting upon motion duly made, seconded and unanimously carried, the meeting was adjourned.”

A. That is correct.

Q. Now, is the meeting relating to which you sent to Taylor a proposed waiver of notice, is it not, or am I wrong about that?

Mr. Dinkelspiel: Show him Exhibit 7. That is the one which you had reference to.

A. I believe that I would have to look and see what I did say.

(Testimony of John Condrey.)

Q. (By Mr. Clark): All right. I don't know if I have that right or not, but you can check me on it. I show the witness Exhibit 7, if the Court please. A. That is right.

Q. Then did the board of directors, according to the minutes hold another meeting at 10:30 on that day? The minutes do show, do they not?

A. That is correct.

Q. Did you give anybody any notice of the meeting which was held at 10:30 on January 15th, 1951, or was it a regular [68] meeting?

A. It was a regular meeting.

Q. So the minutes state, don't they?

A. That's correct.

Q. And the minutes of the meeting which was held at 10:00 o'clock on that date also state that that was a regular meeting, do they not?

A. They do. [69]

\* \* \* \* \*

Q. (By Mr. Clark): Will you turn, please, to the minutes of the meeting of May 18th, 1951, Mr. Condrey. Do you have them before you? [77]

A. I do.

Q. How many members of the Board of Directors of Pacific Rubber Company were present at that meeting? [78]

\* \* \* \* \*

The Court: The question was how many members were present.

Q. (By Mr. Clark): How many members of the Board, yes.

(Testimony of John Condrey.)

The Court: He may answer.

The Witness: There was one member of the Board of Directors. [79]

\* \* \* \* \*

Q. (By Mr. Clark): Now, will you turn, please, to the minutes of the meeting of the Board of Directors of Pacific Rubber Company which was held on the 21st of May of 1951 at ten o'clock in the morning at the company offices in Oakland?

A. Yes. [80]

Q. You were present at that meeting?

A. I was.

Q. Who else was present?

A. W. H. DeSellem.

Q. Any other member of the board of directors?

A. No.

Q. Anybody else other than the two members of the board of directors?     A. No one else.

Q. No one else? Was there any notice of that meeting given by you as secretary?     A. No.

Q. You said, I think, you were a stockholder of Pacific Rubber Company, is that correct?

A. I was.

Q. You said that this morning, I believe.

A. I did.

Q. DeSellem was not a stockholder of Pacific Rubber Company?     A. He was not.

Q. You also became a member of the limited co-partnership called Bay Rubber Company, did you not?     A. I did. One per cent co-partner.

Q. But you were a member of that partnership?

(Testimony of John Condrey.)

A. Yes.

Q. Do you know whether or not Pacific Rubber Company, [81] through its directors, it being then in liquidation, sold or assigned the Minnesota Mining Company contracts to Bay Rubber Company?

A. They did.

Q. They did? Do you know for what consideration?

A. For \$5,000.

Q. Do you know how much had accrued to Bay Rubber Company on those contracts in money up to May 21st, 1951?

A. I do not.

Q. To Pacific Rubber Company, I mean, not Bay Rubber Company.

A. I do not.

Q. You do not? It was more than \$5,000, wasn't it?

A. I believe it was.

Q. It was over \$100,000, wasn't it?

A. Could have been. I don't know. [82]

\* \* \* \* \*

Q. Did you ever see any figures showing how much was owing or had accrued to Pacific Rubber Company on the Minnesota Mining & Manufacturing Company contracts up to May 21st, 1951?

A. I never saw the figures.

Q. You didn't know, then, how much had accrued, is that right?

A. That is what I stated.

Q. That is your statement now? A. What?

Q. That is your statement now?

A. That is my statement. [83]

\* \* \* \* \*

(Testimony of John Condrey.)

The Court: The question is, are you related to Edwin W. Pauley?

Q. (By Mr. Clark): By marriage?

A. I am. [90]

\* \* \* \* \*

Q. (By Mr. Clark): Was DeSellem present at that meeting of May 21st?     A. He was. [92]

\* \* \* \* \*

(Whereupon, the above referred to document was identified as Plaintiff's Exhibit 22 and admitted into evidence.)

\* \* \* \* \*

PLAINTIFF'S EXHIBIT No. 22

January 13, 1951

Pacific Rubber Company  
4901 East 12th Street  
Oakland 1, California

Gentlemen:

By an agreement dated January 7, 1951, Robbins Tire and Rubber Company, Incorporated, and John B. Condrey, have agreed to wind up and dissolve your Company to the extent necessary and to sell most of your assets to a corporation to be formed by Inland and Bay under the name of Pacific Tire & Rubber Company, hereinafter referred to as "Pacific."

Specifically excluded from the assets to be acquired by Pacific are two agreements relating to your participation with Minnesota Mining and Manufacturing Company in the operation of the



Rubber Reserve Synthetic Plant at Torrance, California. Those two agreements are one dated August 28, 1950, between Reconstruction Finance Corporation, Pacific Rubber Company and Minnesota Mining and Manufacturing Company, and the other dated September 20, 1950, between Minnesota Mining and Manufacturing Company and Pacific Rubber Company.

The undersigned agree that if it now is, or hereafter becomes, necessary for an operating tire and rubber company to be associated with Pacific Rubber and Minnesota Mining, in connection with the synthetic rubber project covered by the two contracts mentioned above, then at such time as Pacific is requested by you to do so, it will, to the extent necessary, become associated with you in that project. In such event Pacific shall be paid all of its costs and expenses which result from its being associated with that project. However, Pacific is not to receive any part of the fees or profits accruing to you or Minnesota Mining in connection with such project.

Neither Inland Rubber Corporation nor Pacific shall, without your consent, become affiliated with any other governmental synthetic rubber project so long as you continue to be one of the parties participating in the operation of the Torrance Synthetic Rubber Plant.

You agree by your acceptance of this letter that Pacific shall be entitled to any benefits, such as allocation of rubber, if any, prompt deliveries, or credit in connection with rubber purchases which

may be available to the operating tire and rubber company affiliated with the synthetic rubber project to the extent that you are able to make the same available to Pacific. It is expressly understood that the benefits to which Pacific shall be entitled do not include any patent or other rights which may accrue to you in connection with the synthetic rubber project.

Very truly yours,

INLAND RUBBER CORPORATION,  
a Corporation.

/s/ By EZRA K. BRYAN  
President.

BAY RUBBER COMPANY,  
a Limited Co-Partnership.

/s/ By EDWIN W. PAULEY,  
General Partner.

Accepted this 15th day of January, 1951.

/s/ JOHN B. CONDREY  
ROBBINS TIRE AND RUBBER  
COMPANY, INCORPORATED

/s/ By GEORGE BOUCHARD  
Authorized Agent

Approved and agreed to this 15th day of January, 1951.

PACIFIC TIRE & RUBBER  
COMPANY

/s/ By E. W. BOOZ  
Vice-President

\* \* \* \* \*

(Testimony of John Condrey.)

Q. (By Mr. Clark): I hand you Exhibit No. 22, really a photostatic copy of it, Mr. Condrey for convenience, and ask you to examine the signature John B. Condrey on the second page and state whether or not that is your signature? It's been conceded that it is but I want you to state that it is your signature, a photostatic copy?

A. Correct.

Q. On what date did you sign that instrument?

A. The 15th day of January, 1951.

Q. On May 21st, 1951, at the meeting of the Board of Directors of Pacific Rubber Company on that date did you tell, yourself, who was the other director present, that you had an interest [104] in Bay Rubber Company?

A. I don't know whether I did or not, whether it was discussed at that meeting.

Q. What authority, if any, was there for not giving Glen Taylor, the third Director of Pacific Rubber Company, notice of the meeting of May 21st, 1951?

Mr. Dinkelspiel: I object to the question as calling for the opinion and conclusion of the witness.

Mr. Clark: He was the Secretary of the corporation.

Mr. Dinkelspiel: It has already been introduced in evidence, the fact that this was a regular meeting, what the By-Laws mean by a regular meeting, and that has been answered.

(Testimony of John Condrey.)

The Court: I think this calls for his conclusion, sustained.

Q. (By Mr. Clark): You didn't give him notice, did you?     A. To what?

Q. Of the meeting of May 21st, 1951?

A. No, I did not.

Q. Why?

Mr. Dinkelspiel: I object to the question, it's incompetent, irrelevant and immaterial.

The Court: He may answer.

Q. (By Mr. Clark): Why didn't you give him notice that that meeting was to be held? [105]

A. Because it was a regular meeting and it was not necessary to give him notice.

Q. Did anybody tell you to sell the Minnesota Mining contract or assign them to Bay Rubber Company for a consideration of \$5,000, or did you make up your own mind about the price at which to sell the Pacific Rubber Company's interest to Bay Rubber for \$5,000?

A. I made up my own mind. [106]

\* \* \* \* \*

#### Cross Examination

Q. (By Mr. Dinkelspiel): I show you, Mr. Condrey, Plaintiff's Exhibit No. 7, which is a letter sent by you dated January 26th, 1951, to Mr. Glen A. Taylor, Vice-President, and to which is attached or are attached several documents. I will ask you to refer to the second document in order here which is entitled, "Waiver and consent to the holding of a special meeting of the Board of Director, Pacific

(Testimony of John Condrey.)

Rubber Company, dated, the 14th day of January, 1951," and ask you if that is your signature attached to it?      A. It is. [110]

Q. And is there also the signature, if you know, of Mr. DeSellem?      A. It is.

Q. And it has another signature on it, whose signature is that?      A. Glen A. Taylor.

Q. Was that document ever returned to you as the corporate officer of Pacific Rubber Company or any other place?      A. Never.

Q. And when did you first see it?

A. Today in court. [111]

\* \* \* \* \*

(Exhibits previously marked Plaintiff's Exhibits 24 and 25 in evidence re-marked Exhibit 24 and 24-A in evidence.) [125]

\* \* \* \* \*

## PLAINTIFF'S EXHIBIT No. 24

### Agreement

This Agreement, made and entered into as of the 29th day of June, 1951, by and between Midland Rubber Corporation, a corporation organized under the laws of the State of Illinois, (hereinafter referred to as "Midland"), and Bay Rubber Company, a limited co-partnership, organized under the laws of the State of California (hereinafter referred to as "Bay");

Witnesseth:

Whereas, as of the 28th day of August, 1950 Minnesota Mining and Manufacturing Company and



Pacific Rubber Company entered into a Lease and Operating Agreement, (hereinafter called "Operating Contract"), with the Reconstruction Finance Corporation, (hereinafter referred to as "Reserve"), to lease and operate Reserve's Synthetic Rubber Plant in Torrance, California; and

Whereas, said Operating Contract provides for the participation by Pacific Rubber Company in the performance thereof; and

Whereas, Pacific Rubber Company on January 10, 1951, filed with the Secretary of State of the State of California its Certificate of Election to Wind up and Dissolve its Affairs; and

Whereas, on the 21st day of May, 1951, Pacific Rubber Company assigned all of its right, title and interest in and to said Operating Contract to Bay (retroactively to January 15, 1951); and

Whereas, on the 29th day of June, 1951, Minnesota Mining and Manufacturing Company assigned all of its right, title and interest in and to said Operating Contract to Midland; and

Whereas, Midland and Bay assumed all of the obligations, rights and duties of their respective assignors thereunder; and

Whereas, said Operating Contract provides for the participation by Pacific Rubber Company in the performance thereof, and Minnesota Mining and Manufacturing Company and Pacific Rubber Company heretofore and on September 20, 1950 entered into an Agreement in writing, (referred to as the M-P Operating Agreement), setting forth their respective rights and duties with respect to the per-

formance of said operations and division of compensation received in respect thereto; and

Whereas, said M-P Operating Agreement has been cancelled and terminated by mutual agreement between Midland and Bay; and

Whereas, the parties hereto desire to enter into a new Agreement covering their rights, duties and privileges under said "Operating Contract";

Now, Therefore, in consideration of the promises and the mutual covenants herein contained, it is agreed by and between Midland and Bay as follows:

Section 1. A true and correct copy of the said Operating Contract is hereto attached, marked 'Schedule A', and made a part of this contract as though fully set out herein, including specifically but without limitation to generality, the definitions of terms set forth therein.

Section 2. Bay shall assist Midland in obtaining certain chemists, engineers and other personnel for full or part-time employment by Midland in the performance of said Operating Contract. It is contemplated that in connection with the Operating Contract a pilot plant may be established and operated by Midland for the purpose of improving the quality of Synthetic Rubber, establishing lower production costs and to develop new Synthetic Rubbers. Midland and Bay, when and as necessary and desirable, shall furnish personnel for full or part-time employment by Midland in operating said pilot plant or to serve upon a technical committee to be appointed by Midland to advise in the operations of said pilot plant. Bay shall assist Midland

and/or Reserve in obtaining raw materials for the manufacture of synthetic rubber under said Operating Contract and shall assist in preparing a study of the postwar needs and uses of synthetic rubber products on the Pacific Coast.

Section 3. Midland shall maintain a complete separate system of accounts for the work under the said Operating Contract. All accounting records pertaining to the performance of said Operating Contract with Reserve shall be subject to inspection and audit during business hours by any authorized representative of Bay, but all information obtained therefrom shall be held in confidence.

Section 4. Subject to the provisions of Sections 5 and 6, Midland shall pay to Bay upon receipt thereof from Reserve, thirty-five percent (35%) of the net proceeds received from Reserve as operating fees, reactivating fees in the event of termination, and all other compensation of every kind and character received by Midland for all operations performed under said Operating Contract.

Section 5. It is understood between Midland and Bay that, in carrying out the terms of the Operating Contract, the amount paid by Midland for compensation to employees, employees' profit sharing, employees' pension costs and Social Security Taxes might not be reimbursed either in whole or in part by Reserve. The pension costs herein referred to shall be those costs to be incurred under Midland's pension plan now in effect. The Profit Sharing Costs shall be those costs to be incurred under Midland's Profit Sharing Plan now in effect, or

those costs incurred under a special plan instituted for the employees employed under the Operating Contract, the cost of which shall not be greater than Midland's plan now in effect.

Midland shall maintain an account showing the total amount of gross fees received from Reserve and all expenses incurred by Midland and held to be non-reimbursable by Reserve.

It is further understood between Midland and Bay that in determining the amount to be paid by Midland to Bay under Section 4 hereof, the expenses incurred by Midland as aforesaid which are not reimbursed by Reserve shall be deducted by Midland.

Section 6. It is further understood between Midland and Bay that there may be other expenses incurred by Midland and/or Bay other than those enumerated in Section 5, that are clearly not reimbursable by Reserve under the terms of the Operating Contract and such expenses if incurred by Midland shall be deducted in determining the amount to be paid by Midland to Bay under Section 4 hereof and if incurred by Bay, Bay shall be reimbursed by Midland to the extent of 65% of such expenses; provided however, that any of said expenses must have the written approval of Midland or Bay, as the case may be, before being incurred.

Section 7. To the extent that Midland is not reimbursed or held harmless by Reserve under the said Operating Contract, Bay agrees to indemnify and pay over to Midland thirty-five per cent (35%)



of any amount paid or expenses incurred by Midland (including attorney's fees, court costs and investigation expenses) in settlement or in defense of claims of any kind whatsoever made by third persons for the destruction of property (whether owned by Reserve or others), or injury to, or death of said person or persons arising out of, or in any way connected with the performance of work under the Operating Contract. Midland shall notify Bay with respect to all such claims and shall consult with Bay with respect to the investigation, defense, settlement, or other disposition of all such claims; provided, however, that in the event of disagreement between Midland and Bay, the decision of Midland shall be conclusive and binding upon Bay. It is further understood and agreed that in the event Reserve directs Midland to insure against any of the matters covered by Section 2 of the Operating Contract and Midland fails, refuses or neglects so to do, then and in that event Bay shall have no liability for any such claim or claims as in this Section provided.

\* \* \* \* \*

Section 11. The term of this Agreement shall be co-extensive with, and limited to, the term of said Operating Contract.

\* \* \* \* \*

(Deposition and exhibits received in evidence and marked Plaintiff's Exhibit 27.) [140]



PLAINTIFF'S EXHIBIT No. 27

DEPOSITION OF JOHN L. CONNOLLY

Whereupon,

JOHN L. CONNOLLY

of lawful age, being called, sworn and examined as a witness, deposeth and saith: [2]

\* \* \* \* \*

A. John L. Connolly; Saint Paul, Minnesota.

Q. (By Mr. Bouchard): And what is your business or occupation?

A. I am General Counsel and Secretary of the Minnesota Mining & Manufacturing Company.

Q. And as such secretary, I assume that the records of the company are in your custody?

A. I would say yes.

Q. Have you any connection with the Midland Rubber Company?

A. I would have to refresh my memory but my recollection is that I am Secretary of the Midland Rubber Company—yes, secretary.

Q. Will you tell us, please, what the relationship of Midland Rubber Company is to Minnesota Mining & Manufacturing Company?

A. Midland Rubber Corporation is a wholly-owned subsidiary of Minnesota Mining & Manufacturing Company.

Q. And I assume as such secretary, the records of Midland are in your possession and custody?

A. Well, I think they are all in Saint Paul. They are available. Some of them might still be out on the West Coast, but I don't think so.

(Deposition of John L. Connolly.)

Q. Now, will you refer to the original of the agreement dated August 28, 1950 between—for brevity—R. F. C., Minnesota and Pacific. Do you have the original before you, [4] Mr. Connolly?

A. This (indicating) is the original.

Q. May I see it, please?

(Witness hands document to counsel.)

Q. You have handed me, Mr. Connolly, a bound volume containing some records of Minnesota in connection with the Synthetic Rubber Plant contracts at Torrance, California, and called my attention to schedule “A” which is the original of the contract I have previously referred to? Is that right?

A. That is right.

Q. Now in this contract, which for convenience I shall refer to as the Torrance Operating Agreement, R. F. C. is designated as Reserve, Minnesota Mining & Manufacturing Company is designated as Operator, and Pacific Rubber Company is designated as Pacific? That is correct, is it not?

A. It is my recollection.

Q. And when the word Plant is used in this agreement, it refers, does it not, to the government owned plant which is more commonly known as the Torrance Copolymer Plant?

A. That is right. I think it is referred to as Plancor 611—that is the government’s designation of it.

Q. Yes. Mr. Connolly, did you as Secretary and General Counsel of Minnesota Mining participate in the negotiation of this contract with R. F. C.?

(Deposition of John L. Connolly.)

A. I did, together with one of the Assistant General [5] Counsel, Robert Tucker, and our Patent Attorney, Mr. Carpenter.

Q. You mean Counsel for Minnesota Mining?

A. Yes.

Q. Were these negotiations with R. F. C. carried on for the most part in Washington, D. C.?

A. They were all carried on in Washington, D. C. or over the telephone.

Q. And when you say in Washington, I assume that is the Washington Office of the R. F. C.?

A. That is right; Vermont Avenue.

Q. Do you recall when these negotiations first started?

A. Yes, I do.

Q. When?

A. Well, it was sometime prior to August 27, 1950.

Q. In any of these negotiations leading up to the execution of this contract, did anyone in behalf of Pacific Rubber Company participate in those negotiations?

A. Yes.

Q. Who?

A. Mr. Kerr, Mr. Judson, and I am not too sure if Orris Hedges was in Washington or he came back here after we came back from Washington.

Q. Were there any other representatives of Pacific who participated in those negotiations that you recall?

A. Well, you are speaking now about in Washington? [6]

Q. Well, let's start first in Washington.

(Deposition of John L. Connolly.)

A. When I say Mr. Kerr and Mr. Judson, I am referring to the meeting we had in Washington with the officials of R. F. C. in our negotiations with R. F. C.

Q. Yes.

A. But if you want to know who participated in the negotiations between Minnesota and the Pauley Interests, that is a different question.

Q. I see. Well, all right. We will try to cover that separately, then. The only representatives then in behalf of Pacific Rubber Company who actively participated in negotiations in Washington with the R. F. C. were Mr. Kerr, Mr. Judson, and possibly Mr. Hedges? Is that your recollection?

A. I am talking about when I was present on this contract and that had to do with the form of the contract, only.

Q. Had the terms of the contract been agreed upon by you and the Minnesota officials prior to any participation by Pacific? A. No.

Q. So Pacific representatives, whoever they may be, participated in negotiating the terms with you and Minnesota representatives?

A. Well, are you speaking now about before we went to Washington or in Washington?

Q. Now I am talking about Washington. [7]

A. Well, what we were doing in Washington—I think it was on or about the 28th of August, 1950—with Mr. Kerr, Mr. Oakes, Mr. Tucker, Mr. Carpenter, and Mr. Judson were working out the form of the agreement, what form the contract would take.

(Deposition of John L. Connolly.)

Q. I see.

A. The agreement as between the Pauley Interests and Minnesota had been worked out previous to that date.

Q. I see. Who is Mr. Oakes, Mr. Connolly?

A. He is B. J. Oakes, President of the Midland Rubber Corporation.

Q. And who were the other gentlemen?

A. R. H. Tucker is one of my assistants and E. G. Carpenter is Patent Attorney for Minnesota Mining & Manufacturing.

Q. Now, prior to your negotiations in Washington, I understood you to say that there had been dealings between Minnesota and Pacific with respect to this proposed contract? Is that right?

A. That is correct.

Q. I take it that you represented Minnesota in those negotiations?

A. Not solely. I was one that participated.

Q. Who else in behalf of Minnesota?

A. Well, as I recall it, Mr. McKnight, Mr. Carlton and [8] Mr. Buetow. Now, whether Mr. Bush was in the meeting or not, I do not know.

Q. Where was the meeting held to which you refer?

A. The Board of Directors Room in this building.

Q. And who in behalf of Pacific Rubber Company was present?

A. Mr. Judson, Mr. Kerr, Mr. Pauley and I don't recall anybody else. I don't recall whether



(Deposition of John L. Connolly.)

Orris was here at that time or whether he came on later, but I know he was here before we finally executed all these contracts. [9]

\* \* \* \* \*

Q. (By Mr. Bouchard, continuing): Did Mr. Pauley participate as a representative of Pacific in the negotiations with R. F. C. representatives, in securing this contract?

A. I wouldn't know that. I understand that he did.

Q. At least he didn't do it cooperation with you, or at least in any meeting in which you were present with Mr. Pauley?

A. I think I better answer that question in this way: We had made an application through Mr. Hadlock for the operation of this plant.

Q. When you say "we," who do you mean?

A. Minnesota. [11]

Q. Yes?

A. Through Mr. Carlton, who was president of our company at the time. Later on we were told that it was the policy of the R. F. C. to get more than one operator interested in it and we were also given the names of some other people who had made applications for the operation of the same plant, including the Pauley Interests.

I understand—and I only get this through Mr. Pauley and from what I heard from Mr. Carlton and Mr. Hadlock—that the Pauley Interests had made application. Also, I understand, and I get this again through Mr. Carlton, our president at the

(Deposition of John L. Connolly.)

time, that we would have to go out and secure someone to help us in the operation of this plant. I shouldn't say "help us," but we had to secure another company because they wanted to broaden it all out.

Now, who participated in the negotiations prior, we do not know—I do not know. When I am talking about this deal here when we went down there on a Monday—I got there on a Tuesday, but it is my understanding that Mr. Pauley, Mr. Judson, Mr. Kerr, and Mr. Oakes, and Mr. Hayes—he was Jim Hayes who was an officer of Midland at the time, were in this meeting and they all went in to Washington on Monday and reported that we had agreed among ourselves as to the parts to be played by the two companies.

Q. I see. Was Mr. Pauley there at that meeting in [12] Washington?      A. Which meeting?

Q. That you have just referred to when you got there on Tuesday.

A. No. The only purpose of that meeting was to draw up a contract.

Q. I see.

A. Mr. Judson, Mr. Kerr, Mr. Tucker, Mr. Carpenter and I,—Mr. Carlton wasn't there; it was a question of what type of contract we were going to form.

Q. Mr. Judson was there, I take it, as attorney for the Pauley Interests?      A. That is right.

Q. And the Pauley Interest was the Pacific Rubber Company, was it not?

(Deposition of John L. Connolly.)

A. Well, at that time I don't know.

Q. Well, at least Pacific Rubber Company was the company that became a party to the agreement with Minnesota?

A. Later on, that is true; but before we left for Washington, we had drawn up an agreement between the so-called Pauley Interests and ourselves.

Q. Was that agreement in writing?

A. Yes, sir.

Q. Do you have a copy of that?

(Brief pause.) [13]

A. I am sorry. I have a copy of it in the file, here; I saw it this morning.

Mr. Hedges: Off the record.

(Discussion off the record.)

A. I will show you my signed copy of it, signed by myself and Mr. Pauley, and this I will take out if you want a copy.

Q. (By Mr. Bouchard, continuing): I would like to have a copy, if I may. [14]

\* \* \* \* \*

Q. (By Mr. Bouchard, continuing): Mr. Connolly, at the time of these negotiations had you heard of Pacific Rubber Company?

A. You are speaking now of the 27th of——

Q. August, 1950.

A. Yes. I had heard of the name mentioned, yes.

Q. And were you acquainted with any of the officers or directors of that company?

A. Not unless Mr. Pauley was one, but I just met him the day before.

(Deposition of John L. Connolly.)

Q. Did you know that Mr. Pauley was interested in Pacific Rubber Company?

A. I understood that he had some connection with it.

Q. Had Mr. Pauley represented to you that he had some connection with it or some interest in it?

A. Well, I couldn't say that he did. There was some discussion of it, but what it was now I don't know. You see, that agreement was drawn up by Mr. Judson and myself on a Sunday following the first time that I had ever met Mr. Pauley, which was the 26th.

Q. Yes. At least so far as you now know, no officer or director of Pacific Rubber Company had ever represented [15] to you that Mr. Pauley was interested in Pacific Rubber Company?

A. I think that is a fair statement.

Q. And if I correctly understand your testimony today, Mr. Connolly, it is that it was your understanding that prior to the time Minnesota Mining had negotiated with R. F. C., that the Pauley Interests had likewise negotiated for an agreement covering this plant?

A. That is right.

Q. When you testified, Mr. Connolly, that R. F. C. was interested in getting more than one rubber company interested in the operation of these synthetic plants, you meant by that, did you not, that R. F. C. was interested in having more than one company participate in the operation?

A. Well, when you say, "participate in the operation," I don't know as I quite go along with that.

(Deposition of John L. Connolly.)

Q. I don't think my question is a fair one and I think you picked out the weakness in it. Isn't this a fair statement, that R. F. C. was interested in having some responsible company as the operator of those plants but have other companies participate in, let's say, the profits if there are any? Isn't that a fair statement?

A. No. I don't think that is fair, either.

Q. Well, will you tell us then?

A. It is my understanding that you are speaking now [16] about the 27th day of August and prior thereto?

Q. Yes.

A. That R. F. C. was interested in getting as many companies as they could interested in the rubber program so that they would bring in more know-how, that was my understanding; but not to participate, not just to participate in the fee.

\* \* \* \* \*

Q. Yes. Now, Mr. Connolly, I show you the original contract of R. F. C. and I want to call your attention to Section 2 of that agreement which provides in part as follows: [17] "So long as this contract remains in full force and effect, operator shall procure and maintain insurance, provided such insurance is obtainable, of such kind and character as Reserve shall direct and in such companies and in such amount and shall be satisfactory to or required by Reserve, protecting against loss of or damage to the plant, or against liability to third parties by reason of the activities carried on by operator pur-



(Deposition of John L. Connolly.)

suant to this contract, or against such other contingencies as may be specified by Reserve.”

First, let me ask you, in that contract is it not true that Minnesota Mining Company is referred to as the operator?           A. That is correct.

Q. Did your company, Minnesota, as operator receive from R. F. C. any instruction as to the insurance coverage which R. F. C. would require in connection with the operating of this Torrance Plant?

A. Not to my knowledge. I have no personal knowledge, but I understood that they did.

Q. And was the insurance coverage secured by Minnesota covering the operation of the plant?

A. Well, I can tell you what insurance coverage they did have.

Q. Will you do that, please?

A. This is what was given to me by the insurance [18] schedule that was in effect under Midland. Now, I do not have before me what Minnesota had but I assume it was the same thing. It had to do with workman's comp and that was the Industrial Indemnity. There was another policy with the Anchor Casualty Company, one hundred to one hundred thousand and five thousand liability and I think that referred to—from looking at this—auto-mobile insurance.

Then we have the Republic Indemnity Workman's Comp. Why there are two policies, I don't know. One is dated 1951 and the other, February 28, 1952, the second one.

(Deposition of John L. Connolly.)

Mr. Hedges: They are continuations, I believe.

The Witness: Continuations?

Mr. Hedges: Yes.

A. (Continuing): Then the next one is the Insurance Company of North America and that appears to be liability and five thousand auto property damage. Then again we have workman's comp, Republican Indemnity, 1953; and again we have the Insurance Company of North America, 1953 that is the same auto liability; and 1954, workman's comp; and again in 1955, Republic Indemnity Workman's Comp; and again the same type of insurance by the Insurance Company of North America for automobile; and the Pacific Indemnity appears to be 1954-'55, boiler and machinery.

Q. (By Mr. Bouchard, continuing): And what is the amount? [19]

A. Well, there is no amount to the workman's comp. That covers everything.

Q. Yes?

A. Now, the auto policy is a hundred to a hundred thousand, bodily injury, and five thousand, property damage. That runs throughout all this.

Q. What is the personal injury insurance coverage? A. Personal injury?

Q. Yes. A. Other than automobile?

Q. Yes. A. I don't find any here.

Q. You do not find any? A. No, sir.

Q. Would you let me see that, please?

A. Surely.

(Witness hands documents to counsel.)

(Deposition of John L. Connolly.)

Q. I notice on this schedule you have handed me, Mr. Connolly, that you have one policy in the Anchor Casualty Company, bodily injury, from a hundred to a hundred thousand dollars, which the premium is \$2,087.06. You have another policy in the Insurance Company of North America covering the same type of liability, bodily injury, from a hundred to a hundred thousand and your premium was \$3,598.45; and you have a third policy in the Insurance Company of North America [20] covering bodily injury, a hundred to a hundred thousand; and another policy in the Insurance Company of North America covering bodily injury of a hundred to a hundred thousand, which the premium was \$1,978.94.

I notice that the second policy, the last one I just referred to, dated 9/11/54, and the previous one, 9/11/53—they are all renewals. So I would take it from this sheet that the maximum bodily injury insurance that was carried was from a hundred to a hundred thousand at any one time? Is that to your recollection?

A. I don't so interpret that sheet. I interpret that to have reference to automobile liability. I couldn't swear to it, but that is the way I read it.

Q. Well, then it is your view, Mr. Connolly, that Minnesota Mining carried no personal injury insurance other than automobile insurance in connection with the operation of the plant?

A. I have no knowledge on the subject.

Q. You don't know whether it did or not?

(Deposition of John L. Connolly.)

A. I do not know, no.

Mr. Hedges: You kept referring, Mr. Bouchard, to the insurance being one hundred to one hundred thousand. That, as I understand it, is one thousand for death or injury to one person and one hundred thousand to two or more, in insurance language?

Mr. Bouchard: I stand corrected. You are absolutely right.

Q. (By Mr. Bouchard, continuing): Now isn't it a fact, Mr. Connolly, that Minnesota as the operator of this contract charged all of these premiums for insurance carried on the Torrance Plant to R. F. C. as a cost of operation?

A. Well, they charged to R. F. C. everything they agreed should be put on the plant and that they would stand for. Now, whether that is all of this or not, I don't know, but I assume so.

Q. I think the contract provides that all the insurance required by R. F. C. to be carried is a reimbursable cost of operation.

A. That is right.

Q. I would like to call your attention, if you will refer to it, please, to Section 12 of the Operating Agreement which states in part as follows.

A. I have it.

Q. "It is understood that in the performance of this contract, Operator is acting as agent for Reserve for the account and at the expense and the risk of the latter, and that accordingly Operator shall in no event be liable for but shall be held harmless by Reserve against any damage to or loss



(Deposition of John L. Connolly.)

or destruction of property, whether owned by Reserve or others, for any injury to or death of persons in any [22] manner arising out of or in connection with the work hereunder, unless it be shown to have been caused directly by bad faith or wilfull misconduct on the part of any officer of Operator, or any representative of Operator, having supervision and direction of the plant as a whole, or of the operating facilities or of the standby facilities, acting within the scope of his authority and employment, or unless it results from the failure of Operator to carry such insurance coverage as Operator may be required to carry under this contract."

Do you recall, Mr. Connolly, in the negotiation of this Torrance Operating Agreement any particular discussion which you had with representatives of the R. F. C. with respect to the meaning of Section 12 of that agreement?

A. Yes, we had a great deal of discussion about it.

Q. Is it your recollection that that section of the agreement, Section 12, was drafted by you or your company, or was it a provision that was drafted by representatives of R. F. C.?

A. It was drafted by representatives of R. F. C., and there is another provision somewhere else that limits liability of our company, even for an overt act, to a million dollars.

Mr. Hedges: That is, you are referring to Section 31? [23]

A. (Continuing): Section 31 was the result of



(Deposition of John L. Connolly.)

our negotiations and it reads as follows: "Reserve agrees that notwithstanding any other provision of this contract, the summation of all liabilities of Operator arising out of any provision of this contract or any operations conducted thereunder, shall in no event exceed the total amount of one million dollars," words and figures.

Q. (By Mr. Bouchard, continuing): All right. Now, let's go back to Section 12 a minute, if you will. You say that that provision was inserted and drafted by the representatives of R. F. C. Now, you did not object to the inclusion of Section 12, of that clause, excusing R. F. C. from its duty to indemnify in the event of loss which was attributable to the wilfull misconduct or bad faith of one of Minnesota's officers, did you?     A. Did we object?

Q. Yes.     A. We sure did.

Q. You did object to it?     A. Oh, yes.

Q. And how did the clause happen to be inserted?     A. You mean 12?

Q. Yes.

A. Oh, that is an old provision that has been inserted in all of these contracts for many, many years. [24]

Q. Now, when you came down to the drafting of this particular contract, you didn't object to the inclusion of Section 12 in this contract, did you?     A. Oh, yes, we did.

Q. But your objection was without——

A. It was watered down by the provision of 31;

(Deposition of John L. Connolly.)

it was either take it or else. That was the best deal we could get.

Q. In other words, the government insisted, R. F. C. insisted on Section 12 as worded in the final agreement? A. If not, no contract.

Q. All right. Now, did you construe the inclusion of Section 12 in this contract as any lack of confidence by R. F. C. and the officers of Minnesota Mining?

A. No, sir, because if so they would have lack of confidence in the whole rubber industry. I was told that this was the same provision that was in the other contracts.

Q. In all of them? A. Yes.

Q. Yes. It was a common and the usual provision, was it not? A. That is right.

Q. And it wasn't intended by R. F. C. as any reflection on the confidence of the officers of this company or any other rubber company that it entered into an agreement with, isn't that true? [25]

A. I assumed it was.

Q. May I ask you, Mr. Connolly, how many years you have been an officer of Minnesota Mining?

A. I have been Secretary, if I recall correctly, since 1939. I may be mistaken about a year or so, but that is my recollection.

Q. And associated with the company prior to that time? A. Since July 1st, 1937.

Q. May I ask you, Mr. Connolly, has there ever been any insurance of which you are aware where

(Deposition of John L. Connolly.)

a loss was suffered by your company for injury to or death of a person, or for injury to property of a third person, where the loss was directly attributable to the wilfull misconduct or bad faith of any officer of your company, or of any plant superintendent of your company acting within the scope of his authority?

A. Not to my knowledge, but I know that there has been some where we failed to carry insurance.

Q. That would happen in any event, wouldn't it?

A. That was one of the contingencies that we had in this Number 12.

Q. Yes. If an injury occurred in the operation of any plant operated by Minnesota Mining in which it was not covered by insurance, your company would be responsible, assuming it was negligence, whether or not it was due to bad faith? Isn't that true? [26]

A. Well, that wasn't the test in this. The test was even though you had insurance, if there was bad faith connected with it, you were still stuck with it to the extent of a million bucks.

Q. That is correct.

A. And you were also stuck if you failed to carry the type of insurance that they recommended to you, which I figured was more dangerous than the other.

Q. Do you mean by that answer, Mr. Connolly, that R. F. C. requested Minnesota as Operator of this Torrence plant to carry certain kinds and

(Deposition of John L. Connolly.)

amounts of insurance which Minnesota did not carry?

A. No, but I thought it could be possible that they might have and that we had failed to do that, and if a loss resulted they would come back against us and we would have to go to our associates for their share. [27]

\* \* \* \* \*

Q. Didn't you carry any insurance at all on the operation of the Torrance plant protecting yourself against liability for personal injury or death or property damage?

A. Well, if this schedule is all-inclusive, as I interpret it, the answer is no. Now whether it is all-inclusive, I don't know. My understanding is that this is what they asked us to carry; this is what we charge back to them. Now, whether we had other insurance or not—they haven't given me the schedule.

Q. Someone in your organization would be able to give us that information, would they not?

A. I would assume so.

Q. Rather than take your time, would you be good enough to make inquiry and let us know what insurance was carried protecting the company against death or personal injury or property damage in connection with the operation of the Torrance plant? [28]

\* \* \* \* \*

Q. (By Mr. Bouchard, continuing): Now that contract between Minnesota and Pacific was the

(Deposition of John L. Connolly.)

formal document that carried into effect, I assume, the previous understandings that you had with Mr. Pauley as evidenced by Plaintiff's 1 that we have already offered in evidence? Is that right?

A. That is right.

Q. Was Mr. Pauley present, do you know, when that contract [30] in behalf of Pacific Rubber Company was executed?

A. Well, I wouldn't know. We executed a copy here and it is my recollection that we either mailed it to Mr. Judson or Mr. Hedges and they had it executed out there and sent back.

Q. I see. Between the time of Plaintiff's Exhibit 1, which I think is August 27, 1950, and the date of the execution of this agreement on September 20th, did you have further discussions with Mr. Pauley with reference to the terms of the formal document?     A. No.

Q. So that when you as secretary of this company executed that agreement between Minnesota and Pacific, was it your understanding that Pacific Rubber Company was the Pauley Interests as indicated by your previous letter to him of your understandings?

A. Well, I never gave much thought as to whether it was Pauley Interests or not because this contract was constructed, this particular one, by Mr. Hedges, Mr. Judson, and Mr. Kerr, and myself in this office and we had certain provisions going back and forth, putting them in and taking them out, and those gentlemen talked to Mr. Pauley as to what



(Deposition of John L. Connolly.)

conditions and provisions should go in and when they said "This is the way it is going to be," I accepted it.

Q. Yes, but—— [31]

A. I never talked to Mr. Pauley personally that I can remember now about the details.

Q. But you felt that in executing this contract with Pacific Rubber Company, you were carrying out your previous letter agreement with Mr. Pauley? A. I understood we were, yes.

Q. Now, Minnesota Mining and Pacific—the contract states that the agreement by and between the parties is "in consideration of the premises and the mutual covenants herein contained." Isn't that true, Mr. Connolly, that the consideration flowing from Pacific Rubber Company to your company was 35 per cent of the net compensation which your company received from R. F. C. less certain adjustments resulting from any costs of operating the Torrance plant which were not reimbursable to your company under the terms of the operating agreement with R. F. C.?

Mr. Hedges: I object to the form of the question. The instrument speaks for itself.

Q. (By Mr. Bouchard, continuing): Well, are you able to make an answer to that, Mr. Connolly?

A. I kind of got lost—which consideration? Flowing from us to them?

Q. Yes. All that Pacific got was 35 per cent of the net management fee that Minnesota Mining got from R. F. C.?

(Deposition of John L. Connolly.)

A. No. I think if you read all of the contracts, the [32] M-P and the other agreements, there was more than that but I would have to refresh my memory. There is a patent agreement here dated the same date between the same parties in which the parties agree that they will do certain things which would be to the mutual benefit of the respective parties.

Q. If any patent grew out of this operation?

A. If any patent grew out of this operation; so when you confine the consideration flowing from us to Pacific to 35 per cent, I can't go along with that.

Q. You add to that, I take it then, a benefit to Pacific from any patent that might result?

A. Well, and research. Not only patents, but a lot of research that is set forth in this patent agreement.

\* \* \* \* \*

Q. (By Mr. Bouchard, continuing): Now that operation, of course, has now been terminated, has it not? The operation [33] of the Torrance plant by Minnesota and Pacific?

A. That is right. The plant has been sold to the Shell Oil Company.

Q. Were any patents secured by either Minnesota or Pacific as a result of its operation of that plant, the benefit of which went to either Minnesota or Pacific? A. Not to my knowledge.

Q. Did Pacific perform any services which

(Deposition of John L. Connolly.)

amounted to managerial assistance to your company in that operation?

A. I understood they did.

Q. Do you know of your own knowledge whether they did or not?

A. The only knowledge I have is that Mr. Kerr had performed certain services and was endeavoring to perform others which were not successful to the entire venture. Now, as to the other details, I wouldn't have any information.

Q. Was Mr. Kerr at any time on the payroll of Minnesota Mining Company?      A. No, sir.

Q. Do you know what the nature of the services rendered by Mr. Kerr were?

A. Well, it is my recollection that Mr. Kerr was instrumental in obtaining certain employees out there and assisted Dr. Oakes, and he was also attempting to get raw material; things of that nature. [34]

Q. Was the personnel with which he was instrumental in securing, personnel of a technical character?      A. I really do not know.

Q. In the agreement—and I agree with Mr. Hedges that the agreement will speak for itself—but I will ask you if you recall in that agreement, Mr. Connolly, whether or not Minnesota received consideration from Pacific because of its covenant to indemnify your company against any losses which might be incurred—do you feel as an officer of Minnesota Mining that that covenant on the part of Pacific Rubber Company to indemnify Minnesota

(Deposition of John L. Connolly.)

for any losses was a consideration to your company for execution of the contract?

A. Well, I never have given any thought to that, but I would have to refresh my memory as to what provision there is in here on that subject. Do you recall what section it is?

Q. I would think perhaps that would be your Section 31. A. No, but I mean in the M-P——

Q. Oh, in the M-P agreement; frankly, I don't have a copy of it.

Mr. Bouchard: Off the record.

(Discussion off the record.)

Q. (By Mr. Bouchard, continuing): Will you refer to Section 7, please?

Mr. Hedges: Of the M-P?

Mr. Bouchard: Of the M-P agreement. Section [35] 7 contains this sentence: "It is further understood and agreed that in the event Reserve directs Minnesota to insure against any of the matters covered by Section 2 of the operating contract and Minnesota fails, refuses or neglects so to do, then and in that event Pacific shall have no liability for any such claim or claims as in this section provided."

Now is it your understanding of that provision, Mr. Connolly, that this clause means that Pacific Rubber Company's agreement to indemnify you, Minnesota, was binding only in the event that your company did in fact carry insurance coverage which R. F. C. insisted upon and which R. F. C. agreed to pay for?



(Deposition of John L. Connolly.)

Mr. Hedges: I object again to the form of the question.

Mr. Bouchard: Well, Mr. Connolly can answer it if I have been clear enough. If not, I will re-state it.

A. I think I understand your question. I just wanted to read that Section 7 again. I think the answer to your question is no, if I understand it correctly. It is my recollection that Section 7, after reading it over, is that in the event we were obligated to pay any amount under that provision 31, with a combination of 12, that they would reimburse us to the extent of 35 per cent unless we were requested by Reserve to cover it by a policy and we failed, neglected [36] or refused—in that event, they would pay us nothing.

Q. (By Mr. Bouchard, continuing): Yes. So under that clause Pacific was liable to your company only in the event that your company actually carried insurance which R. F. C. required? Isn't that true?

A. No, no. No, I don't agree with that at all.

Q. Under what circumstances is it your view that Pacific then would be liable to you, Minnesota?

A. Well, in the event that something happened and there was an accident and there was damage and we had to pay out, we will say, a million dollars.. Pacific would be required to pay us \$350,000.

Q. Regardless of how the accident happened?

A. That is right; regardless of how the accident happened.



(Deposition of John L. Connolly.)

Q. Even if it was an accident just involving negligence of some employee of Minnesota?

A. No, I wouldn't agree to that. It had to be an overt act before we are liable in the first place; either an overt act or the failure to insure against something that Reserve asked us to do.

Q. Isn't it a fact that the only instance in which Minnesota could be liable to Reserve was in the case of an accident or death or property damage which was caused solely by the bad faith of an officer of Minnesota or an employee in a managerial capacity? [37] A. No.

Mr. Hedges: I object to the form of the question; it is argumentative; and the contract speaks for itself.

Q. (By Mr. Bouchard, continuing): That is not your interpretation?

A. That is correct. I thought I had given my interpretation.

Q. I think you had. I wanted to pinpoint it a little more if I could. I realize you testified, Mr. Connolly, that you were not familiar with what insurance R. F. C. may have required you, Minnesota, to carry and you are going to get that information for us, but are you in a position to state this: Do you know whether or not Minnesota carried the insurance that R. F. C. required them to carry in connection with the operation of the Torrance plant?

A. I would say we did, yes, because it was all reimbursable.

Q. Yes. Let me ask you this, Mr. Connolly:

(Deposition of John L. Connolly.)

Would it be your opinion that under your agreement with Pacific that Pacific was liable to you only for a liability incurred which was not reimbursable to Minnesota by R. F. C.?

Mr. Hedges: May I have that question again?

(Question read by the reporter.)

Mr. Hedges: I object to the form of that question, [38] too. The contract speaks for itself. He can't interpret the contract.

Q. (By Mr. Bouchard, continuing): I would like to have your opinion of it, if you will, Mr. Connolly, in answer to my question.

A. Well, I think we have to define our terms, and this is just my opinion for what it is worth. Certain types of risk, R. F. C. was going to take themselves; other types they demanded that we insure for them and if we failed to insure for those, we were liable—that is between Minnesota and R. F. C. and Midland later on.

As between ourselves, Minnesota and Pacific, Pacific having no control over the management and the particular employees, they wouldn't know whether or not we got all the insurance that R. F. C. asked us to; and we put that in as an exception and that they would not be liable if we failed to do that.

Now, on the ones that R. F. C. says we are to carry and we will not reimburse you for those if it is committed by an overt act, then we look to Pacific for 35 per cent of it. That is my understanding of the whole thing. But, if Pacific could prove that through our neglect out there on the

(Deposition of John L. Connolly.)

Coast we neglected to insure for something that R. F. C. stuck us for, they didn't have to reimburse us. [39]

\* \* \* \* \*

Q. (By Mr. Bouchard, continuing): I would like to clear up one thing, Mr. Connolly, if you can help me: You have testified that it is your opinion that Minnesota Mining carried all of the liability required by R. F. C. Now, if you did and an injury or death or damage to property resulted, you would be covered by your insurance; but if there was a liability above it, R. F. C. still accepted that liability, did they not, as per your agreement with them in the operating agreement?

A. Well, it is my recollection that R. F. C. did not require us to insure against the plant blowing up in its ordinary operations and they would hold us harmless against that type of loss; but if one of the officers committed an overt act and actually goes so far as to set a torch to it and blow it up, they only took the liability over a million dollars and they look to us for the balance of it.

Q. Yes.

A. That type of insurance they did not indemnify us for—either one of those types, the plant blowing up—nor did they require us to carry insurance on it.

Q. And your illustration of some employee putting a torch under one of the boilers and blowing it up is what you have in mind in reference to an overt act?

(Deposition of John L. Connolly.)

A. That is right, but it would be a managerial employee, [40] I think are the words that are used in the contract.

Q. Yes.           A. Or an officer.

Q. Yes. Now, at the time of the Minnesota-Pacific contract that was executed on September 20, 1950, did Minnesota Mining receive a personal guarantee from Mr. Pauley guaranteeing any loss or any claim against Pacific? Or to state it another way, did Mr. Pauley at the date of the execution of this contract between Minnesota and Pacific, give Minnesota Mining his personal guarantee that Pacific Rubber Company would be able and would respond to any liability?

A. He did not.

Q. Now I think, Mr. Connolly, sometime in June of 1951 Minnesota Mining Company transferred its interest under the operating agreement to its subsidiary, Midland Rubber Company, is that correct?

A. June doesn't quite ring a bell.

Q. I may be wrong on my dates there.

Mr. Hedges: Off the record.

(Discussion off the record.)

Q. (By Mr. Bouchard, continuing): What was the date of the assignment by Minnesota to Midland?

A. It is recited in this agreement as the 29th of June, 1951. [41]

Q. Did R. F. C. consent to that assignment?

A. Yes.



(Deposition of John L. Connolly.)

Q. Did you receive information, Mr. Connolly, on or about May 21, 1951 that Pacific Rubber Company had transferred all of its right, title and interest under the Torrance operating agreement and under the Minnesota-Pacific contract to a limited partnership known as Bay Rubber Company?

A. What was the date?

Q. May 21, 1951.

A. Well, somewhere along in there. I couldn't swear to that date.

Q. What evidence, if any, do you have in your file of that assignment by Pacific to Bay Rubber Company?

A. Well, I have a Termination Agreement signed by Mr. George Halpin, Executive Vice-President, and myself as Secretary, and Bay Rubber Company, General Partner, dated the 29th day of June, 1951.

Q. May I see that, please?

(Witness produces document.)

A. I probably have others but that is the first thing I find there.

Q. Mr. Connolly, you have shown me an original record in your files entitled "Termination Agreement," dated June 29, 1951, between Minnesota Mining and Manufacturing Company and Bay Rubber Company which is executed on behalf of [42] Minnesota Mining by Mr. Halpin, Executive Vice-President, attested to by yourself as Secretary, and by Bay Rubber Company, Edwin W. Pauley, General Partner. [43]



(Deposition of John L. Connolly.)

Q. I would like to ask you a couple other questions, Mr. Connolly. I call your attention to Section 11 of the Minnesota-Pacific contract which reads as follows: "Neither party hereto shall sell, assign, or pledge its interests under this contract nor any of its rights, powers, privileges, [44] duties, or obligations hereunder without the prior written consent of the other and of Reserve."

Did Pacific Rubber Company request the prior written consent of either Minnesota or Midland to the assignment by it of its interests under the M-P contract to Bay Rubber Company?

A. I don't know what they did to Reserve but they did request our consent and we gave our consent.

Q. Do you have a copy of any letter or document from them requesting the consent of Minnesota?

A. I do not recall any letter. I recall a telephone conversation with Mr. Hedges.

Q. And did you give your consent in writing?

A. My recollection is that I did not but I haven't searched all the files to verify that. It was about the same time that we were asking them for their consent to transfer to Midland.

Q. Yes, but you do not recall whether you gave that consent in writing in behalf of Minnesota or not for Midland?

A. My best recollection is that I did not, other than enter into the agreement.

Q. Yes. Now, what written evidence is there of

(Deposition of John L. Connolly.)

Minnesota or Midland's consent to the assignment by Pacific to Bay, other than the document that you have already exhibited to us and another one of which you are having typed for us? [45] Is there anything else?

A. Not that I know of, no.

Q. Was Pacific's consent to the assignment by Minnesota to Midland given in writing, or was that done by telephone?

Mr. Hedges: Off the record.

(Discussion off the record.)

A. (Continuing): I have here a document dated the 29th day of June, 1951, and it is entitled as "Agreement of Assignment, Amendment and Guaranty," and it is signed by Minnesota Mining, Midland Rubber, Pacific Rubber and Reconstruction Finance Corporation.

Q. May I see that?

(Witness produces document.)

A. And as I recall, that is the authority from Pacific consenting to the assignment and Reconstruction Finance Corporation consenting to the assignment.

\* \* \* \* \*

Q. (By Mr. Bouchard, continuing): Mr. Connolly, when you, in behalf of Minnesota, were requested orally on the phone by Mr. Hedges to consent to the assignment by Pacific [46] Rubber Company of its interest in the operating agreement with Bay Rubber Company, did you attach to your consent any strings?

(Deposition of John L. Connolly.)

A. I told Mr. Hedges, as I recall it, that it was too long and involved a story to be over the telephone, and if he would send me the document setting out all of these things, and I think we talked about resolutions and authority from Pacific, and so on, that I would go over them; and whether I told him at that time that we had to have a guaranty from Ed Pauley or not, I do not know, but that is one of the conditions before we accepted, before we finally consummated the deal.

Q. And why did you want that guaranty from Mr. Pauley?

A. Well, originally, it is my recollection that we talked about a guaranty from Mr. Pauley and when I saw the financial statement which was dated July 31, 1950, and I think the same date for the prior year, of Pacific Rubber Company and found that they owed \$725,000 to Oakland Rubber Company, I think we worked out a deal wherein and whereby Oakland Rubber Company agreed to subordinate the payment of its indebtedness during this period without our consent, and then we went along with Pacific Rubber Company's financial statement.

Q. And Oakland Rubber Company did consent to subordinate its indebtedness? A. Yes. [47]

Q. I think that is what you showed me a minute ago, was it not? May I see that consent?

(Witness produces document.)

A. That is back in 1950.

Q. You have handed me, Mr. Connolly, from your files, the original of an agreement between

(Deposition of John L. Connolly.)

Pacific Rubber Company and Minnesota Mining and Manufacturing Company, dated September 20, 1950.       A. Yes.

\* \* \* \* \*

Q. (By Mr. Bouchard, continuing): Plaintiff's Exhibit [48] Number 6, Mr. Connolly, which you have given us, is an agreement between Pacific, Oakland and Minnesota whereby Minnesota consents to assignment by Pacific to Bay and also providing that the subordination agreement of September 20, 1950, which is evidenced by Exhibit 5, is terminated.

Now, do I understand that as a consideration to the termination of the subordination agreement Minnesota demanded of Mr. Pauley his personal guaranty with respect to any possible liability of Bay Rubber Company?

A. I think that and others. It is my recollection that what happened was I understood that Pacific Rubber Company had disposed of its assets and was out of the business, disposed of to Mansfield either directly or indirectly—I have forgotten the details—and that one of the things that we wanted to get cleaned up was these outstanding subordination agreements and all these different things.

So we went through this process of eliminating all of those and wound up with a guaranty from Mr. Pauley because I didn't know anybody else that had any financial substance. Pacific, as I understood, was out of the picture.

(Deposition of John L. Connolly.)

Q. Did Minnesota or Midland, either one, require Mr. Pauley to give either Minnesota or Midland his personal guaranty of Bay Rubber's possible liabilities? A. Oh, definitely.

Q. As a condition to Minnesota consenting to the [49] assignment? A. That is correct.

Q. Yes.

A. Without that, we wouldn't have consented to it.

Q. Now, did Mr. Pauley give you such a guaranty? A. Yes.

Q. May I see it, please?

A. Here is the photostatic copy. I will show you the original.

\* \* \* \* \*

Q. (By Mr. Bouchard, continuing): Do you know whether or not, Mr. Connolly, R. F. C. ever consented to the assignment by Pacific Rubber Company of its interests to Bay Rubber Company?

A. To the best of my knowledge, they did not.

Q. Did Midland Rubber Company and Bay Rubber Company execute a new contract between themselves covering the operation of the Torrance plant?

A. Yes. It is my recollection they executed the same type of contract in M-P and the patent agreement contract.

\* \* \* \* \*

Q. (By Mr. Bouchard): Mr. Connolly, at the time that Bay Rubber Company assumed liabilities of Pacific under the M-P contract, did you make



(Deposition of John L. Connolly.)

any inquiry as to the financial status of the partnership known as Bay Rubber Company?

A. To my knowledge, I did.

Q. You knew it was a limited partnership? [51]

A. That is right.

Q. And you knew that Mr. Pauley was a general partner?     A. One of the partners, yes.

Q. And you knew that he was the general partner, did you not?

A. I think the document disclosed that.

Q. Yes. Did you make any independent inquiry as to Mr. Pauley's financial resources?

A. At that time?

Q. Yes.     A. No.

Q. But you did in behalf of Midland require him to give his personal guaranty?

A. That is right.

Q. Did Bay Rubber Company give Midland Rubber Company any assurances that it could provide required services in connection with the operation of that Torrance plant?

A. We were assured we would get the same type of cooperation and Mr. Kerr would be in the picture the same as he was before.

Q. Who gave you those assurances?

A. Mr. Hedges and Mr. Kerr.

Q. Did Mr. Pauley make such representation?

A. No. I didn't talk to Mr. Pauley at that time. I talked to him later on about it. [52]

Q. I take it that as a result of those assurances given you by Mr. Hedges and Mr. Kerr, in any

(Deposition of John L. Connolly.)

event Midland Rubber Company looked to Bay Rubber Company—the partnership to continue to perform its obligations under the agreement the same as Pacific Rubber Company had in the past? Is that correct?

A. When you say “looked to Bay,” we never had any contact with Pacific Rubber Company other than through Mr. Pauley and Mr. Kerr, and we looked to the same place with the Bay Rubber Company.

Q. Same people?           A. That is right.

Q. Mr. Connolly, did you when you were requested by Pacific to consent to the assignment by it of its interest to Bay inquire from R. F. C. as to whether or not it was going to consent to that assignment?

A. No, sir. Personally, I didn't think it was necessary.

Q. Why?

A. Because I didn't think it was any of their business.

Mr. Hedges: You and I concurred for once, didn't we?

Q. (By Mr. Bouchard, continuing): Although Pacific was a party to the operating agreement with R. F. C. and Minnesota, was it not? [53]

A. As I understand “party,” yes. I have forgotten how it was described.

Q. I think it was simply described as “Pacific.”

A. Minnesota was described as “Operator.”

Q. Mr. Connolly, do you have record of the pay-

(Deposition of John L. Connolly.)

ments which were made by Minnesota Mining Company to Pacific Rubber Company under the management and operating contract between the period January 15, 1951 and May 21, 1951?

A. I have asked our accounting department to compile such a record. That is the one I just asked my secretary to see if it was ready.

Q. And if it is not ready today, you will furnish that? A. I will furnish that.

Q. Fine. Thank you. Did you also in that request, Mr. Connolly, ask your accounting department to give us a statement of all of the fees paid by either Minnesota Mining or Midland to either Pacific Rubber and Bay Rubber?

A. I asked them to give us all the information requested in Questions 12 and 13 in your statement.

Mr. Hedges: Those can be forwarded to the reporter and marked as the next exhibits in order if you wish, as far as we are concerned.

Mr. Bouchard: All right. We will do that.

Mr. Hedges: I don't believe he can answer any questions in respect to that. [54]

Mr. Bouchard: All right.

Q. (By Mr. Bouchard, continuing): I take it, Mr. Connolly, that Pacific Rubber Company carried out its duties and rendered any services required to be rendered under the operating agreement? That is, up to May 21, 1951, when it assigned its interest to Bay, did it not? A. That is right.

Q. I take it by the same token that Bay Rubber Company did not perform any services under the

(Deposition of John L. Connolly.)

operating agreement prior to the time it became the owner under the assignment of May 21, 1951?

A. As far as I know, that is correct.

Q. In the M-P contract, Section 8, Mr. Connolly, that is the agreement between Minnesota and Pacific dated September 20, 1950—Section 8 provides as follows: "Pacific agrees that it will make no payment to Oakland Rubber Company, a California corporation, on account of principal or interest on any debt which is now or may be at any time hereafter owed to Oakland without the written approval of Minnesota."

I want to ask you, was this covenant by Pacific Rubber Company part of the consideration flowing to Minnesota Mining Company for the execution of the Minnesota-Pacific contract?

Mr. Hedges: That question is objected to as to form. He can answer it, if he can. [55]

A. I think I have said before that when I received the financial statement of Pacific showing an indebtedness of \$725,000 due on the note, I requested an agreement that Pacific would not make the payment and requested an agreement that Oakland would not receive the payment, and that their debt would be subordinated to any indebtedness that arose under this.

Q. Well, in making that request and getting a compliance with it, namely, that Oakland would subordinate its claim against Pacific to any claim Minnesota might have under this agreement, didn't you regard that as of value to Minnesota Mining?



(Deposition of John L. Connolly.)

A. Well, shall we turn it around and say without that——

Q. Let's not. I want you to answer my question and you can make any answer you want to it, but don't turn the question around, please.

Mr. Hedges: I think he is going to answer it by turning it around any way he sees fit.

A. Then if you don't like it, you can turn it around again. I was going to say without that, Minnesota, I do not think would have entered into this contract and assumed that possible million dollar liability without some reimbursement from somebody along the line. [56]

\* \* \* \* \*

Q. (By Mr. Bouchard, continuing): Mr. Connolly, do you own either directly or indirectly any interest in Bay Rubber Company?

A. Neither directly nor indirectly do I own any interest in Bay Rubber Company.

Q. And to your knowledge do any officers of Minnesota Mining Company own any interest in Bay Rubber Company?

A. No. Not to my knowledge, no, sir.

Q. You know Mr. J. L. Hayes?

A. I know Mr. J. L. Hayes.

Q. Does he have any connection with Minnesota Mining Company?

A. He is employed here at Minnesota Mining Company and President of the National Advertising Company, one of its wholly-owned subsidiaries at the present time.



(Deposition of John L. Connolly.)

Q. And how long has he been in that capacity?

A. Well, you mean how long——

Q. Associated with Minnesota Mining?

A. Oh, since 1944, '41.

Q. And has been with the company continuously since that time?

A. Either with the company or one of its subsidiaries.

Q. Yes. You know, do you not, that Mr. Hayes owns an interest in Bay Rubber Company?

A. I do not know. I was told that he had an interest [57] in Bay Rubber Company. To what extent, I do not know.

Q. And do you know that he also is the owner as trustee of a partnership interest in Bay Rubber Company?

A. No, I hadn't heard that.

Q. Did you know, Mr. Connolly, that at the time Bay Rubber Company was formed that an eight per cent interest in Bay Rubber Company was set aside to be assigned to the officers, or directors of Minnesota Mining Company?

A. No, I did not. Nor did I know it at the time it was formed nor since that time. I never heard of it until this moment. [58]

\* \* \* \* \*

Q. Mr. Connolly, did R. F. C. ever make any complaints to Minnesota about the assignment from Pacific to Bay?

A. Did they ever make any complaints?

Q. Yes.

A. Well, I don't know whether you would charac-

(Deposition of John L. Connolly.)

terize them as complaints, but they never approved it, if that is what you mean.

Q. Well, I understand that that is true and that that is your testimony, but I mean was there ever any indication on the part of R. F. C. that they were so dissatisfied with the arrangement that they considered terminating the whole deal?

A. I was never so advised. The first thing that I [59] ever heard of that was when some particular contract—I have forgotten what it was now—was signed by Bay Rubber Company and it is my recollection that they wrote to Dr. Oakes or somebody and said, "Who is Bay Rubber Company," and it is my recollection that either Mr. Kerr or somebody else representing the Pauley Interests went down and told them and they were requested, as I recall it now, to approve it and they never did approve it one way or the other.

But, they never advised me or anyone in our organization to my knowledge that they were talking about terminating the contract. When they talked to me about it, I told them we were getting the same amount of cooperation from the Bay representatives as we were getting from Pacific; and their only possible objection, as I recall it, was that Mansfield was already in the picture and that it now had acquired Pacific; and for Mansfield to get into the act again, they would have two operations and they didn't think that it should be done.

Q. As a matter of practice, isn't it true, Mr. Connolly, you have had much more experience with

(Deposition of John L. Connolly.)

the R. F. C. than I have—but isn't it true that R. F. C. as a general matter objected to anyone having an interest in synthetic rubber plants that wasn't engaged as an operator, an operating company?

A. Well, then if that were true, then they shouldn't [60] have put Pacific in there in the first place because Pacific was not operating the plant.

Q. But Pacific was operating its own plant in Oakland?

A. Oh, yes, yes.

\* \* \* \* \*

Q. (By Mr. Bouchard, continuing): Was Minnesota paid on a monthly basis by R. F. C.?

A. That is my recollection, but they did not always pay either Bay or Midland because we got into a hassle with the renegotiation board that we might be required to renegotiate some of these payments. So we held back a certain percentage until that was cleared up, and it was finally cleared up without any payments. [61]

\* \* \* \* \*

[Endorsed]: Filed Dec. 5, 1955.

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DAVID A. BLACK

called as a witness on behalf of the plaintiff; sworn.

The Court: State your name, please.

A. David A. Black—B-l-a-c-k.

Direct Examination

Q. (By Mr. Archer): Mr. Black, what is your business address?

(Testimony of David A. Black.)

A. 1100 Rowland Building, Los Angeles 13.

Q. What is your occupation?

A. I am an examiner of questioned documents and handwriting identification specialist.

Q. With whom are you associated?

A. I am associated with Clark Sellers, past president of the American Society of Questioned Document Examiners.

Q. Are you a member of any professional organization in connection with your work?

A. Yes, I am a member of a number, the principal one of which is the American Society of Questioned Document Examiners. [143]

\* \* \* \* \*

Q. Mr. Black, I show you a book of minutes of the Pacific Rubber Company, Plaintiff's Exhibit 15 for identification here, and ask you have you made an examination of the entire contents of this minute book?

A. Yes. May I take it apart briefly? Not all apart, but apart to some extent.

Mr. Dinkelspiel: Put it back together again.

A. Yes, exactly.

Mr. Archer: I will put it back together.

A. (Witness examining): Yes, this is the minute book that I have examined, every page of which I have examined. [150]

Q. (By Mr. Archer): When and where did you make that examination?

A. I made that examination in my office, 1100

(Testimony of David A. Black.)

Rowland Building, Los Angeles, on May 11, 12, 13, 16 and 17 of this year.

Q. What was the purpose of that examination?

A. The purpose of my examination was to determine if the minutes and other documents in the minute book were entirely regular in every respect or whether there was evidence of substitution of pages or other irregularity.

Q. What did your examination include?

A. It included an examination of the typewriting on each of the pages to determine whether or not all of the typewriting on all of the pages of individual sets of minutes and other documents was all done at the same time as a part of the same typing operation, what the conditions were as to whether or not the same paper was used in each of the minutes, within a group of pages representing one set of minutes. It included an examination of signatures and the ink in the signatures and other writing, if such there be in the various pages, to determine what light that might shed on the authenticity or otherwise of the minutes, and it included other examinations of other material, all to the same end, whether the minutes were regular and proper and authentic in every respect.

Mr. Dinkelspiel: May I ask the witness if he would explain what he means by the word "authenticity of Minutes"? [151]

A. Yes. Whether there was evidence—. Authenticity in the sense that an expert uses it, as to whether the conditions in the documents indicate



(Testimony of David A. Black.)

that something that purports to have been done all at the same time, such as a single set of minutes was actually typed all at the same time, on the same typewriter, under the same conditions, or when the typewriter was in the same condition, including the typewriter ribbon, and whether the paper was the same and whether regularity or similarity or uniformity is found or variance from one sheet to another or one condition on one page to a comparable condition on another. [152]

\* \* \* \* \*

Q. (By Mr. Archer): Now, I direct your attention to the minutes of the first meeting of the board of directors at 10:00 a.m., December 29th, 1948, consisting of eight typewritten pages in Exhibit 15, and ask you if you found anything to indicate substitution of pages in that group of pages.

A. Yes, I did.

Q. What did you find?

A. I found that in those eight pages of minutes for that first meeting of 10:00 a.m., December 29, 1948, in Exhibit 15, that the first four pages were typed on a machine which bore Royal elite type of the particular type font characterizing Royal elite typewriters before and up to 1945. [153]

\* \* \* \* \*

Q. (By Mr. Archer): Now, Mr. Black, I had asked you whether in those minutes of December 29th, 1948 at 10:00 a.m. in Exhibit 15, you had found anything to indicate substitution of pages in that group of pages, and I believe you testified that

(Testimony of David A. Black.)

these pages one through four which you have marked, were made under a certain kind of a typewriter; is that correct?           A. Yes.

Q. Well, would you continue your answer, then, to the question?

A. The first four pages, as I said, were written on a machine bearing Royal elite type of the period to 1945 and they had a fairly dark black impression and indicated a clean condition of the type.

The last four pages of the same minutes, pages five, six, seven and eight, which I shall mark in the same way as I have marked the first four (witness marking), I found were typed on a Royal elite machine, the same as the previous minutes, but of a distinctively different style of type characterizing Royal elite typewriters from the period 1945 to 1950. [155]

The typewriting in the last four pages, pages five, six, seven and eight, had a thicker type impression than the first four pages, and there was evidence of a somewhat dirtied condition of the type in some filled-in spaces showing in letters in the typewriting in the last four pages.

In the examination of the paper used in the eight pages of those same minutes, I found that the paper of the first four pages was what is known and shows in the watermark as "Whitings Imperial Bond," and it had no tinting of the margins or edges of the paper.

The last four pages, pages five, six, seven and eight, on the other hand, I found with the brand and

(Testimony of David A. Black.)

watermark, "Super Linen Ledger," a different paper from the first four pages, and the Super Linen Ledger in the last four pages had a green tint of the edges of the paper, different in that respect also, from the paper in the first four pages.

In addition to the typewriting evidence, and the paper evidence, I examined the characteristics indicating how heavily the characters were struck when the typing was done, and I found that the typewriting in the minutes, the first four pages of minutes, were of uniform pressure and they were what might be termed as average in typing pressure or the force with which the keys were struck.

The last four pages, pages five, six, seven and eight, on the other hand, showed indentions caused by the striking [156] of the keys, indicating that the keys were struck noticeably heavier in the last four pages than in the first four pages, and the last four pages were uniformly heavier and different in that respect from the first four pages.

In addition to that, I found that the indention of some of the material——

The Court: The what?

A. ——the indention, which is a characteristic of offsetting the margins of typewriting to the left from the—or to the right from the left margin, as would be done in the first line of a paragraph, or in insetting a particular paragraph or section. I am indicating such an indention on page five of the minutes in question. (Showing Court) The indention of the paragraphs I am now indicating on page

(Testimony of David A. Black.)

five of the minutes of 10:00 a.m., December 29, 1948 are indented nine spaces, whereas the comparable indention throughout the first four pages of the minutes illustrated here by the indentions here on page four of the minutes in question was ten spaces rather than nine, as in the last four pages of the minutes.

Q. (By Mr. Archer): I believe you mentioned that there was a certain kind of typewriter which typed pages five to eight of the minutes of 10:00 a.m., December 29, 1948 in Exhibit 15. Now, what kind of typewriter was that?

A. That is a Royal elite typewriter of the period of manufacture, 1945 to 1950, different from the Royal elite type [157] characterizing Royal elite machines before 1945.

Q. Well, with regard to this typewriter which typed pages five to eight, did you examine the minutes to see where in the minutes an exemplar of that typewriter next appeared? A. Yes.

Q. On what date were those minutes written?

A. Those were the minutes of May 18, 1950 where the same type style next appeared in the minutes, in chronological order.

Q. That is the minutes of May 18, 1950 in what is now Exhibit 15, which you have before you?

A. Yes.

Mr. Dinkelspiel: '50 or '51?

Q. (By Mr. Archer): Was that '50 or '51?

A. 1950.



(Testimony of David A. Black.)

Q.    Would you check and see whether it is '50 or '51 there? [158]

\* \* \* \* \*

Q.    (By Mr. Archer): Mr. Black, I show you what has been marked Plaintiff's Exhibit 26 in evidence in this matter which has been identified as an application for a permit to issue and sell securities by Pacific Rubber Company, on file with the Corporation Commissioner of the State of California, containing a copy of the minutes of the first meeting of the Board of Directors of Pacific Rubber Company at ten a.m. on December 29, 1948.

I believe it shows that it was filed on December 30, 1948, in the San Francisco office.

Have you made an examination of this copy of the minutes of December 29, 1948 at 10:00 a.m. of Pacific Rubber Company?

A.    Yes, I made an examination of Plaintiff's Exhibit 26.

Q.    Have you had an opportunity to examine the original filed copy of this Plaintiff's Exhibit 26 in the files of the Corporation Commissioner?

A.    Yes, I examined it here this morning. [159]

Q.    Did you make a comparison between the typewriting shown in this copy of the minutes in Exhibit 26 and the typewriting in the corresponding minutes in the minute book, Exhibit 15, previously shown you?

A.    Yes.

Q.    For what purpose did you make an examination?

A.    For the purpose of determining whether the



(Testimony of David A. Black.)

minutes in the minute book for this meeting, the first meeting, corresponded to the minutes in the Corporation Division copy, especially as to whether they were both typed in the same typing operation simultaneously and one was a carbon copy of the other, or whether something else was true.

Q. And what did you find?

A. I found that the first four pages of the minutes in the minute book were made simultaneously with and at the same time as the carbon copies of the first four pages of this minutes in the Corporation Division copy, Exhibit 26.

The Court: That I don't understand.

The Witness: To state it another way: I found that the first four pages of the minutes in the Corporation Division copy, Exhibit 26, were made as carbon copies made at the same time in the same typewriter as a part of the same typing operation made simultaneously with the first four pages of the original typed minutes in the minute book, the Corporation Division copy being a carbon copy. [160]

The Court: Well, in brief you found that that was a carbon copy, those first four pages of the ones in the minute book?

The Witness: Made at the same time, yes.

The Court: Well, if it's a carbon copy wouldn't it be made at the same time?

The Witness: Not necessarily. It might have been a carbon copy made at a different time of the same material on the same machine. In other words,

(Testimony of David A. Black.)

they are an actual carbon copy made at the same time.

The Court: That's what I call a carbon copy.

The Witness: Thank you, sir.

The Court: One is made at the same time.

The Witness: I found, however, that the other pages did not agree; in the Corporation Division copy of the minutes for that meeting in Plaintiff's Exhibit 26 there are seven pages; in the minutes in the minute book for that meeting there are eight pages.

The Court: I lost you there.

The Witness: In the carbon copy in the Corporation Division set of minutes for that meeting of 10:00 a.m. December 29, 1948, there is a total of seven pages of minutes. That's in the Corporation Division carbon copy. However——

Q. (By Mr. Archer): That is Exhibit 26? [161]

A. 26. However, in Exhibit 15, the minute book, the minutes for that same meeting, 10:00 a.m. December 29, 1948, contain eight, not seven pages of minutes. The minute book contains eight pages; the Corporation Division copy seven pages for the minutes of the same meeting.

Q. Did you determine whether or not any typewritten material appeared in the minutes of the minute book, Exhibit 15, which did not appear in the carbon copy filed with the Corporation Division, which is Exhibit 26?     A. Did I find what?

Q. Did you find—did you determine whether or not any typewritten material appeared in the min-

(Testimony of David A. Black.)

utes in the minute book, Exhibit 15, which did not appear in the carbon copy filed with the Corporation Division, Exhibit 26?      A. Yes.

Q. What is that material?

A. I found that on page——

Mr. Dinkelspiel: Let me have the question again.  
(Record read.)

Mr. Dinkelspiel: That doesn't call for the opinion of this witness, Your Honor; the documents speak for themselves, both available.

Mr. Archer: I think it identifies what we are talking about.

The Court: He may answer. [162]

Mr. Dinkelspiel: Part of the stipulation which I gave you, offered you.

A. I found that the third and fourth paragraphs of page 5 of the minutes in question for 10:00 a.m. December 29, 1948,——

The Court: In which exhibit?

The Witness: In Exhibit 15, the minute book—— did not appear anywhere in the corporation division copy of the minutes, Exhibit 26, and I also found that the last three paragraphs at the bottom of page 7 of the minutes in the minute book, Exhibit 25——

Q. (By Mr. Archer): 15.

A. ——15, pardon me, and continuing, the first three paragraphs at the top of the succeeding page, page 8 of the minutes in the minute book, Exhibit 15, did not appear in the Corporation Division copy of the minutes, Exhibit 26.

(Testimony of David A. Black.)

Q. Well, so there will be no misunderstanding about it, you are referring to the third and fourth paragraphs on page 5 of the minutes of December 29, 1948?      A. 10:00 a.m.

Q. Pacific Rubber Company, and Exhibit 15. It has been stipulated that Exhibit 8 in evidence is a photostatic copy of those minutes.

For the record, I would like to read those paragraphs at this time. [163]

"The Chairman stated that Article 3, Section 5 of the By-Laws of this corporation provided for the adopting of a resolution designating the time and place of holding regular meetings of the Board of Directors, and upon motion duly made, seconded and unanimously carried, the following resolution was adopted:

"Resolved that regular meetings of the Board of Directors of this corporation shall be held without call on the third Monday of each month at the hour of ten o'clock a.m. at the principal office of the corporation located at 4901 East 12th Street, Oakland, California;

"Provided, however, should said day fall upon a legal holiday, then said meeting shall be held at the same time on the next day thereafter pursuing which is not a legal holiday. Notice of all such regular meetings of Board of Directors is hereby dispensed with."

Mr. Dinkelspiel: Read the other changes, Counsel.

Mr. Archer: You can read them.



(Testimony of David A. Black.)

Q. Now, if I understand your testimony, Mr. Black, those paragraphs I just read do not appear in Exhibit 26?           A. That's right. [164]

\* \* \* \* \*

Q. Mr. Black, do you find in the minutes any other exemplar of the typewriter which typed the last four pages of the minutes in Exhibit 15 of the meeting on December 29, 1948, at ten a.m.?

A. Yes. You want me to describe them? [169]

Q. Yes, please.           A. Or list them?

Q. Yes.

A. In addition to the minutes of May 18, 1950, there are also the waiver and the minutes of July 6, 1950, the waiver and minutes of September 20, 1950, the waiver and the minutes of November 14, 1950, the minutes of January 5, 1951, ten a.m., a notice dated December 26, 1950, which is numbered page 20 in the left upper margin of the minutes, the minutes of January 5, 1951, for eleven a.m., the minutes for January 15, 1951, ten a.m., a resolution of January 15, 1951, accompanying the immediately previously described minutes, and three pages of minutes and two pages of a resolution bearing date May 21, 1951.

Those are——

The Court: Three pages of minutes are what?

The Witness: And two pages of a resolution, both bearing the same date, May 21, 1951. Those are everything that is in the minutes in the minute book.

The Court: Now, finish that statement. Those



(Testimony of David A. Black.)

are everything that are in the minute book—what? That are written by the same typewritten as wrote the last four pages of the——

The Witness: Minutes.

The Court: ——minutes of the meeting of [170] December 29, 1948.

The Witness: 1948, at ten a.m.

The Court: At ten a.m., is that right?

The Witness: Yes, sir.

Mr. Archer: Is it stipulated that Exhibit 20 in evidence is a copy of the minutes of May 21, 1951, as they appear in the minute book, Exhibit 15, to which the witness has just referred?

Mr. Dinkelspiel: I would like to ask the witness one question before answering you, purely for clarification. May I?

The Court: Surely.

Mr. Archer: Depends upon the question.

Mr. Dinkelspiel: I want to ask the witness whether, when he testified that the typing was the same as on the last four pages of the minutes of December 28, 1948 in other places, whether you were referring to other places in that minute book which is before you, or was there any other outside documents, say, purporting to be minutes to which you may have referred in one or more instances?

Mr. Archer: I think he referred to consent and waiver——

The Court: Let him answer, please.

The Witness: I was referring only to minutes in the minute book and not to anything outside.

(Testimony of David A. Black.)

Mr. Dinkelspiel: And the minutes in the minute book [171] when you saw it last May?

The Witness: Yes.

Mr. Dinkelspiel: Thank you. [172]

\* \* \* \* \*

The Court: Just a moment. That's the sole purpose of using this photographic evidence is to prove just that fact, that those four pages are different than the four pages that appear in the Corporation file, is that right?

Mr. Archer: And that that typewriter was not again used in the minutes until May 18, 1950. [173]

\* \* \* \* \*

Q. Mr. Black, I would like to invite your attention to the last page of the minutes of the first meeting at 10 a.m., December 29, 1948, in the minute book, Exhibit 15; inviting your attention to the page bearing the signatures of Orris R. Hedges and V. Hendricks——

The Court: Mr. Reporter, read that question back.

(Pending question read back by reporter.)

Q. (By Mr. Archer): Did you examine these signatures with relations to the other signatures of these individuals which appear on documents dated the same date in the minute book?

A. Yes. [176]

Q. What did you find?

A. I found that there are a number of other places in the minutes book, Exhibit 15, in different places where the signatures of these same two

(Testimony of David A. Black.)

people appear all purporting to be made on the same date, at least that's the date on the document, and in none of——

Mr. Dinkelspiel: Wait a second, please. Would the witness please point those places out?

The Court: Let him finish his answer. Go ahead and finish it.

A. In none of those other places were the same inks used in their signatures as was used in the signatures of those two persons on the last page, page 8 of the minutes in question.

Mr. Dinkelspiel: Now, may I ask the witness to point out those places?

The Court: No, you may do that in cross-examination. Let's go ahead.

Mr. Dinkelspiel: O.K.

Q. (By Mr. Archer): Did you find anything else on this same last page of these minutes of December 29, 1948, at 10 a.m., in minute book Exhibit 15, which appeared to be of significance?

A. Yes.

Q. What did you find?

A. Are you referring to whether or not the page had any evidence of being mailed out? [177]

Q. Well, yes, if that is what you found.

A. Yes, I found evidence characteristic of papers sent through the mail.

Q. What were those characteristics?

A. I found that the page had been folded in three horizontally, as is done on letter size pages, folded to enclose in regular business envelopes, and

(Testimony of David A. Black.)

that none of the other pages in the minutes or waiver of that same date had been so folded. I found that the page——

The Court: What date are you talking about now?      A. December 29, 1948.

The Court: All right.

A. Ten a.m., the page I am pointing to.

The Court: Which have folds and which do not?

A. The last page bearing the signatures, page 8, has folds.

The Court: This one?      A. Yes.

The Court: Just a minute, let me—. Go ahead and finish your answer, sir.

A. But that none of the other pages have such folds, and then there is other evidence as well.

The Court: Now, this page here that you are showing me now, that is marked page 8, what folds are you referring to?

A. I am referring to the folds going horizontally through the upper third of the page and horizontally through the lower [178] third of the page.

In addition to the folding, I found that the page, that same page, contains considerable crinkling, such as characteristic of papers that I have seen crinkled going through a mail slot.

In addition to that, I found that it had a paper clip mark, which I have found to be characteristic of many documents sent as enclosures with a letter of transmittal.

And in addition to that, I found that there was the remains or vestiges of the initials "ORH,"

(Testimony of David A. Black.)

is a copy of what appears in Exhibit 15 on that date and time.

Mr. Dinkelspiel: Wait a second (examining document). What date are you referring to?

Mr. Archer: January 15. He might have the wrong exhibit there, counsel. January 15, 1951, at 10 a.m.

Mr. Dinkelspiel: The witness inadvertently turned the page.

Mr. Archer: It is Exhibit 16.

Mr. Dinkelspiel: I see it now.

Mr. Archer: That does not include the resolution he was talking about but it does include the minutes.

Mr. Dinkelspiel: I will stipulate with counsel that Exhibit No. 16 is a copy of the minutes which appear as both [181] minutes of regular meeting of Board of Directors of Pacific Rubber Company, and then the date is January 15, 1950—but I want the record to show——

The Court: '50?

Mr. Dinkelspiel: January 15, 1951—but I want the record to show that the second two pages the witness was referring to were entitled "Certified copy of resolution of Board of Directors of Pacific Rubber Company" as distinguished from the first two pages being "Minutes".

Is that stipulated, counsel?

Mr. Archer: Yes. The certified copy is the one that has the handwriting "Regular" over the word "Special".



(Testimony of David A. Black.)

Mr. Dinkelspiel: And which the witness says was on a different typewriter than the minutes. What that proves, I don't know.

The Witness: My testimony was on the same typewriter but at a different time.

Mr. Dinkelspiel: Pardon me, I didn't misquote you intentionally. I ask the same question: What difference?

Q. (By Mr. Archer): Now, Mr. Black, directing your attention to the two pages of minutes of the regular meeting or what purports to be a regular meeting of the Board of Directors held at 10:30 a.m., January 15, 1951, in Exhibit 15, did you examine those two pages to determine if there were any different conditions at that time? [182]

A. Yes.

Q. What did you find?

A. I found that while both of the two pages of those minutes were typed on the same typewriter, they were typed at a different time on the same typewriter as indicated by the darkness of the ribbon impression made on them. [183]

\* \* \* \* \*

### Cross Examination

Q. (By Mr. Dinkelspiel): Mr. Black, just by way of introduction you had this minute book in your possession for several days during the month of May, I understand? A. Yes.

Q. And it was delivered to you by whom?

A. By Mr. Bouchard.

Q. Do you know who Mr. Bouchard is?

(Testimony of David A. Black.)

A. Yes.

Q. One of the attorneys for the plaintiff in this action, [184] isn't that correct?

A. I am not sure I knew it at the time, but I know it now.

Q. Yes. You said you had it in your possession how long?

A. I examined it on five different days, and I imagine I may have had it a day or so more.

Q. You don't know how long——

A. About a week.

Q. You don't know how long Mr. Bouchard had it in his possession?      A. No.

Q. You testified this morning, part of your testimony, that you had gone through that book, you noticed where there was evidence of clip marks.

A. Yes.

Q. That's right. I don't want to misquote your evidence, — as if something had been clipped together and mailed, I think you said.

A. I stated, I believe, that many pages had clip marks and clip marks are one characteristic of a document that has been mailed with a letter of transmittal.

Q. Clip marks, though, are characteristic of other things?      A. Oh, yes.

Q. Instead of dogearing a page, for example—you know what I mean by dogearing, don't you?

A. Folding over. [185]

Q. Yes.

A. And tearing it in lieu of paper-clipping it?

(Testimony of David A. Black.)

Q. That's right. A. Yes.

Q. You mentioned paper-clipping; that is quite customary in marking a page for further reference, isn't it? A. Yes, I suppose it is.

Q. You don't mean to testify, of course, that you could tell the difference between that sort of a paper clip mark and a paper clip mark that is sometimes identified with mailing? A. No.

Q. And you are not so testifying now?

A. Well, to this extent, that sometimes the position of a paper clip mark will indicate whether it was used to attach two papers together or to mark a certain paper or section of a paper for identification.

Q. You mean the position of a clip mark will do that? A. Yes.

Q. Well, is there a set position in your mind for clip marking for identification purposes?

A. No, but there is a characteristic position for one clipping one paper to another for sending through the mail or other purpose.

Q. I see. But could you testify under oath——  
The Court: How is that? [186]

The Witness: That is on the top side of the paper toward the left hand corner.

The Court: Have you ever seen it done on the top side of the paper toward the right hand corner?

The Witness: Occasionally, yes.

Q. (By Mr. Dinkelspiel): Now, Mr. Black, I think you testified that you examined this book and you also examined, I believe, a photostatic copy of

(Testimony of David A. Black.)

minutes of a meeting of December 28, 1948 that were filed with the Corporation Commissioner, or a photostatic copy, is that correct? A. Yes.

Q. Did you examine any other documents in this case other than the book and the copy of the minutes of that meeting?

A. No, just the minutes in the book, that is, everything in the book, Exhibit 15; everything in the certified copy, photostatic copy of the material filed with the Division of Corporations and Secretary of State, and the originals of the material filed with the Division of Corporations.

Q. Nothing else?

A. Nothing that I recall now.

Q. No other letters?

A. No, I don't recall any at all.

Q. No other copies of minutes?

A. No, not that I recollect now.

Q. Would you recollect if you had? [187]

A. I would think I would remember them, and I don't remember having examined any others now.

Q. So we can say quite positively, then, you didn't examine any other documents?

A. Fairly positively, yes.

Q. I think you said, did you not, that—I will start that over again.

You identified the first four pages of the organization minutes, those minutes of December 1948, as having been made by one typewriter and the last four pages by another. A. Yes.

Q. You also identified, did you not, the type of

(Testimony of David A. Black.)

typewriter that was involved?           A. Yes.

Q. Two types, were there not? The first four pages by what kind of a machine?

A. Royal elite before 1945.

Q. Royal elite before 1945. And the second type by what?

A. Royal elite 1945 to 1950.

Q. All right. Then you identified certain minutes beginning with May 18, 1950, the minutes of a meeting, as having been made by a Royal elite since 1945?

A. Yes, the same sort of a machine, Royal elite 1945 to 1950.

Q. I want to ask you a question: Did you testify, or do you [188] now testify that the minutes of May 18, 1950, were made on the same machine as the minutes of the last four pages of the organization meeting in 1948?

A. What was the date of the May minutes?

Q. May 18, 1950.           A. Yes.

Q. Your answer is that that is the same machine?           A. Yes.

Q. And you deduce that from what?

A. From the fact that, first of all, that the make, the type style and the manufacture period characteristics of the type are the same, which means it is the same make, model and age of machine.

Q. Yes.

A. And secondly, there are certain identifying characteristics which are characteristic of individ-



(Testimony of David A. Black.)

ual machines that appear in both. I don't recall all of them now, but——

Q. What do your notes show on that?

A. My notes show that the two machines are the same, and I have just checked it against one or two of the characteristics and I find that, here and now, my notes are confirmed which were the result of my first examination.

Q. Now, will you proceed to the minutes of the —to the waiver and minutes of July 6, 1950. I will ask you the same question, whether that is the same machine. [189]

A. Yes, my notes show it is the same machine, and this reexamination shows there are characteristics which are the same.

Q. Can you come to that kind of a conclusion without too extensive an examination? I mean, if I were to show you something that might be written on that or another machine and ask you to compare it, could you reach any conclusion?

A. I might be able to. I am not basing my present statement——

Q. I know that.

A. ——on the examination here, but principally on my previous examination. I might be able to do it, I don't know.

Q. I am not questioning your previous examination, just asking for the information. If I were to show you a document can you with a fair degree of accuracy tell me whether it was the same machine?

(Testimony of David A. Black.)

A. Well, it might take 15 or 20 minutes.

Q. I see. Could you tell whether it was the same type of machine?

A. I could say almost immediately if it were a different machine.

Q. Fine.

A. If it were a different make, model or type style. [190]

\* \* \* \* \*

Q. Let me ask you this question: There was a different typewriter used, and you have so testified, for the first four pages of the 1948 minutes; right?

A. Yes.

Q. Have you looked through that book to determine where, if anywheres, the same typing appears, or work of the same typewriter appears?

A. Yes. [191]

Q. May we have that, please?

A. In the waiver, for the same minutes—I beg your pardon. I may have previously mentioned that; yes, the waiver for the same minutes, 10 a.m. meeting of December 29, 1948, and in the order, in chronological order the waiver for the 2 p.m. meeting of the same date and for the 4 p.m. meeting of the same date, the waiver, and for the minutes of the 2 p.m. meeting of the same date, and for the first page of the minutes for the 4 p.m. meeting, but not the second page.

Q. Let's get that. The 4 p.m. meeting on the 28th?

A. On the 29th of December, 1948.

(Testimony of David A. Black.)

Q. There are two pages there and you say it is the first page or the second page?

A. It is the first page that was written on the same kind, the same typewriter, as was used to produce the first four pages of the minutes of the 10 a.m. meeting.

Q. And just so we know what the differential is, the second page consists only of the following: "Upon motion being duly made, seconded and unanimously carried the foregoing resolution was adopted. There being no further business to come before the meeting, by motion duly made, seconded and unanimously carried the meeting was adjourned." And signed. Is that a different typewriter than the first page?

A. No, those are the 2 p.m. minutes; I am referring to the 4 p.m. minutes. [192]

Q. My mistake. What about the waivers, notices, the resignations—are they the same?

A. The resignations are on the same typewriter, Royal elite before 1945.

Q. The same typewriter?

A. Yes, as was used to type the first four pages of the 10 a.m. minutes.

Q. I see. In this meeting at 4 o'clock, is the waiver on the pre-1945 typewriter?

A. The waiver of—accompanying the 4 o'clock minutes is typed on the same pre-1945 typewriter. The minutes, the first page of the 4 o'clock minutes were typed on that same typewriter, but the second page was not.

(Testimony of David A. Black.)

Q. I seem to be a bit lost here.

Now, which 4 o'clock meeting are you referring to? Are there two sets of minutes of the 4 o'clock meeting?           A. One.

Q. My mistake. All right. Will you find for me, please, the waiver of the 4 o'clock meeting?

A. Yes.

Q. You have pointed to a consent and waiver and you say that is on the pre-1945 typewriter?

A. On the pre-1945 typewriter.

Q. And the first page of the minutes is on the pre-1945 typewriter? [193]           A. Yes.

Q. The second page is on the subsequent one?

A. No, that is on an entirely different one.

Q. Entirely different. All right. Is this the first place in the minute book where a third type of typewriter comes in, starting chronologically?

A. Yes, that is the first page in the minutes where a third typewriter chronologically appears.

Q. What is that type?

A. That is an IBM, an International Business Machines elite typewriter.

Q. That's a different typewriter altogether?

A. Yes.

Q. Now, continuing through the minutes, will you show us, please—you have already showed us where the pre-1945 Royal is in—will you go through the minutes and show us where your examination discloses the other one or two typewriters as having typed the document?

(Testimony of David A. Black.)

A. You mean show where both the pre-1945 Royal machine and the IBM machine?

Q. Yes, or any other machine excepting only the subsequent 1945 Royal.      A. Yes.

Q. That you testified about.

A. I have just mentioned that the second page of the minutes [194] for the 4 p.m. meeting of December 29, 1948, are on an IBM elite; that's the first instance of IBM.

Q. Right.

A. Then there is a waiver and two pages of minutes for a meeting of March 18, 1949, which is written on the same—which are all written on the same IBM elite typewriter as was used to produce the minutes, the second page of minutes for the 4 p.m. meeting of December 29, 1948, previously referred to.

Q. That is a meeting of March——

A. ——18, 1949.

Q. 1949. And the waiver of that meeting, right?

A. Yes.

Q. The next is the meeting of 18 May 1950, which you have testified to as being made on the subsequent to 1945 elite; right?      A. Right.

Q. And the waiver for that?      A. Yes.

Q. The next meeting of 6 July 1950, I think you have already testified as to that, haven't you?

A. Yes.

Q. That was the subsequent to 1945 Royal?

A. Yes.

Q. Waiver the same thing? [195]      A. Yes.



(Testimony of David A. Black.)

Q. Minutes of September 20, 1950 and the waiver?

A. On the same after 1945 Royal elite.

Q. The minutes of 14 November 1950 and the waiver?

A. Yes, on that same later Royal elite.

Q. The 5th of January, 1951, 10 o'clock, I think you told us was on the later Royal elite, is that right?

A. Yes.

Q. How about the call to that meeting? Want to look at it in the book, or do you have your notes on it?

A. What is the date of the call?

Q. Well, it is for a meeting on January 5, 1951, dated the 26th.

A. That's on a still different IBM machine; it is on a second IBM.

Q. On a second IBM?

A. Machine.

Q. That brings a fourth machine into the discussion, does it not?

A. Yes.

Q. Now, will you look at the next page, which seems to be—no, I withdraw the “seems to be”—the next page says notice of special meeting of Directors, likewise dated December 26, looks like a call to me. Can you tell what machine that was on?

A. That's on the same IBM elite as made the call to which it corresponds, that is, the fourth machine, the second IBM elite machine.

Q. Now then, the meeting of the 5th day of January, 1951, special meeting of shareholders, 11 o'clock meeting—

A. 11 o'clock meeting.

(Testimony of David A. Black.)

Q. —I think you said was a later Royal?

A. That is correct.

The Court: Wait a minute. 10 o'clock a.m.?

The Witness: No, 11 o'clock meeting he was referring to.

The Court: Did you skip the 10 o'clock meeting?

Mr. Dinkelspiel: If I did I did it unintentionally.

Mr. Archer: What date is that?

Mr. Dinkelspiel: January 5. January 5, 1951. I think he testified that was also the Royal—was it not?

The Witness: 10 o'clock meeting, yes, and the 11 o'clock meeting, too.

Q. (By Mr. Dinkelspiel): And this call of this meeting I think you said was a different machine, or am I wrong?

A. Yes, that's a different machine.

Q. The second IBM?            A. Yes.

Q. And this copy, notice of a special meeting, this notice dated December 26, 1950, what is that?

A. Is that the one that you previously asked me about, the carbon copy? [197]

Q. Yes.

A. You previously asked me about?

Q. I think so.

A. That is on the second, different IBM machine.

Q. Now, we have the second meeting, or rather the stockholders meeting of January 5, 1951, at 11 o'clock. That is the second Royal, is it not?

(Testimony of David A. Black.)

A. Yes, that is the Royal elite 1945 to '50.

Q. All right. Now, there is a certified copy of a resolution that I think you said is the same machine you just mentioned?

A. No, I haven't mentioned that; that is on the second IBM elite machine.

Q. I see. And also the affidavit dated the 26th day of December, 1950?

A. That is also on the second IBM elite.

Q. All right. There is a call of a special meeting of shareholders dated the 26th day of November, 1950, signed John Condrey; what machine is that?

A. On the second IBM elite.

Q. And the minutes of special meeting of shareholders dated December—no. Notice of special meeting of shareholders dated December 22nd, 1950, is that that second IBM elite? What would you say that was? [198]

A. May I refer to page numbers on the book?

Q. Yes.

A. That would be much simpler.

Q. Certainly.

A. That was written on the later Royal elite.

Q. This one? The notice of special meeting.

A. Yes.

Q. And the affidavit of mailing notice of special meeting?

A. That's on the second IBM elite.

Q. Now, we have minutes of—I think you testified that this 15th day of January 1951 certified copy of resolution was what? Your page 17 and 18.

(Testimony of David A. Black.)

A. That is on the second Royal elite.

Q. And the minutes of that same meeting, of the meeting in which the resolution was adopted, which is your page 15 and 16 and dated January 15, 1951?

A. That is on the second Royal elite, just as is the resolution.

Q. All right. Now, the minutes of regular meeting of Board of Directors January 15, 1951, 10:30 a.m., your pages 13 and 14.

A. Those are written on a third IBM elite.

Q. Another one?            A. Another one, yes.

Q. We have a certified copy of resolution of Board of Directors, [199] unsigned, dated the 22nd June, 1951, your numbers 11 and 12.

A. That is on the same third IBM elite.

Q. Minutes of meeting on the 18th day of May, 1951, your numbers 9 and 10.

A. That's on the same third IBM elite.

Q. Must have bought a new typewriter at that time, didn't they? There is a waiver of notice dated May 17, 1951, which is this?

A. That is on the third IBM elite.

Q. I see. Then there is a regular meeting, so-called, the Board of Directors of Rubber Company, dated May 21, 1951, your pages 6 and 7?

A. That's a resolution.

Q. Certified copy of resolution.

A. Yes. That is written on the later Royal elite previously mentioned.

Q. Later Royal elite. Now, then a meeting, min-

(Testimony of David A. Black.)

minutes of a regular meeting of Board of Directors, which is dated May 21, 1951, 10 o'clock; what was that written on?

A. On the later Royal elite.

Q. Did you have occasion to examine this minute book, the Articles of Incorporation that appear therein?

A. Yes.

Q. What was that written on? [200]

A. That was written on the first IBM elite that I mentioned.

Q. First—pre-1945?

A. No, I didn't specify any day as to the IBM elite.

Q. I beg your pardon. IBM elite?

A. Yes.

Q. Not upon the Royal? A. No.

Q. How about the by-laws — did you look at them?

A. Yes.

Q. What machine were they made on?

A. They were made on two different machines.

Q. Divided how?

A. Certain non-consecutive pages were written on the Royal elite, 1922, or, that is, pre-1945.

Q. Yes.

A. Which I have previously mentioned and certain others not consecutive pages were written on the later Royal elite, 1945 to 1950.

Q. I hand you, Mr. Black, a series of documents which are together in Plaintiff's Exhibit No. 7. First is a letter from Mr. John B. Condrey to Mr.



(Testimony of David A. Black.)

Glenn A. Taylor, dated January 26, 1951, and ask you if you have ever seen that before?

A. No.

Q. Would it be possible for you to tell us on what machine [201] that letter was written?

A. It is on a Royal elite of the later vintage, 1945 to 1950. If you wait just one moment, I will check to be sure. Yes, that is correct, it is written on a Royal elite 1945 to 1950. [201A]

Q. (By Mr. Dinkelspiel): Would you say the same typewriter wrote the second four pages, the minutes of December 28, 1948, or is that asking too much of you from this observation?

A. I can try to answer it.

Q. All right, sir, will you?

A. (Witness examining document) I can't make a definite statement now in this examination, but I note that it is—the letter you have shown me, Plaintiff's Exhibit 7, the top document—is the same—shows the same brand and style and vintage of type as the last four pages of the minutes of ten a.m. December 29, 1948, and in addition has, I have observed, some individually identifying characteristics which to me make it seem probable that the two are typed on the same machine.

Q. Would it indicate as to who did the typing?

A. Would what indicate?

Q. I mean your examination of the two documents, the last four pages of the minutes of 1948, and this letter, would it give you any clue as to whether the same typist did it?

(Testimony of David A. Black.)

A. I haven't examined it for that purpose.

Q. You have not examined any of these documents for determination of the similarity of typist or identity of typist?      A. No, I haven't.

Q. Is that possible to do?

A. It sometimes is. But I am not sure whether it is or is not possible in this case. [202]

Q. Now here is attached to this document a so-called waiver, the document I am talking about is Plaintiff's Exhibit No. 7, purportedly signed by three directors, Mr. DeSellem, Mr. Taylor and Mr. Condrey, and dated the 14th of January, 1951, and relating to a meeting to be held January 15, 1951.

Have you ever seen that before?

A. Was it ever in this minute book?

Q. As a blank piece of paper I think it was in the minute book, but I don't think it ever came back filled in, at least after it was sent east.

Mr. Archer: Do you wish to testify, Mr. Dinkelspiel?

Mr. Dinkelspiel: He asked me a question, and to my knowledge it was produced in court by the plaintiffs in this action.

A. I can't see the absence of a number in the upper left hand corner here, which enables me to testify that it was not in the book when I examined it, and I have never examined it before.

Mr. Dinkelspiel: Could you tell what typewriter that was on?

A. (Examining.) I will make the same statement about it, that the second sheet of paper from

(Testimony of David A. Black.)

the top in Plaintiff's Exhibit 7, that I made about the first sheet of paper, it is the same make, model and vintage of typewriter, it has the same type style, and it has some individually identifying [203] characteristics, which lead me to believe it is probably the same typewriter as typed the first page of Exhibit 7 and the last four pages of the minutes of ten a.m. December 29, 1948.

Q. Will you say the next document appearing, also entitled "Waiver and Consent to the holding of special meeting of Board of Directors of Pacific Rubber Company," is or is not a contemporaneous carbon with the last page that you testified about?

A. (Examining.) Yes, it appears to me here to be a carbon copy made simultaneously.

Mr. Dinkelspiel: I would like to follow Mr. Archer's suggestion and ask you, Mr. Clerk, to letter these pages so that we know what he is referring to.

The Court: Is this Exhibit 7?

Mr. Dinkelspiel: This is Exhibit 7. Just so we know what page we are referring to.

The Court: All right.

(The pages to Exhibit 7 lettered A to I, inclusive.)

Q. (By Mr. Dinkelspiel): Just so the record can be clear, the first document you testified about under Plaintiff's No. 7 is now marked 7-A, is it not?

A. Yes.

Q. And the second document is 7-B?

A. Yes. [204]

(Testimony of David A. Black.)

Q. And the third document, the carbon, is 7-C?

A. Yes.

The Court: They are all on the same typewriter?

A. That's my best judgment.

The Court: And that's the second Royal?

A. Yes.

Q. (By Mr. Dinkelspiel): Now, there is 7-D.

I think you may find this in the minute book—I am not sure—the meeting of January 15, 1951—I'm not sure.

Mr. Archer: Special meeting?

(Witness examining documents.)

Mr. Dinkelspiel: I think I misled you. I don't think that is in the minute book.

A. Just a moment (examining minute book). Well, I don't know where it is.

Mr. Archer: Where is that certified copy that has "Special" changed to "Regular" on it?

Mr. Dinkelspiel: Here.

Mr. Archer: That's a certified copy. I guess that isn't it.

Q. (By Mr. Dinkelspiel): Anyway, could you tell us which machine typed this original of this carbon 7-D?

A. (Examining) It is of the same Royal elite style of 1945 to 1950 as the others, the second Royal elite. I am not sure whether it is the identical machine or not. It may be but—— [205]

Q. At any rate—— A. I can't tell.

Q. It is the same type of machine that typed the last four pages of the 1948 organization minutes?

(Testimony of David A. Black.)

A. Yes.

Q. 7-F, which is—I do think you will find this in the minute book—January 15, 1951——

The Court: What happened to 7-E? Did I miss that?

Mr. Dinkelspiel: Pardon me, sir. 7-E is the second page of the last instrument.

The Court: I see.

(Witness examining.)

The Witness: What is the question here?

Mr. Dinkelspiel: My question is what is the typewriter that typed the original 7-F? If I misled you, I want to withdraw it. I thought this was a carbon of the one in the minute book, but it does not appear to be it.

A. No, it's definitely not.

Q. Yes.            A. Do you wish to know the——

Q. The type similarity.

A. The type of machine it is?

Q. Yes.

A. (Examining) It is an IBM elite.

Q. IBM elite? [206]            A. Yes.

Q. You don't know which one of the three IBM's, if any of those that you testified to, it is?

A. No, I don't.

Q. 7-G is the second page of that, your Honor.

7-H—I will ask you whether 7-H was typed, as far as you can determine, on the same typewriter as 7-A, which I believe you stated was the later elite?

A. (Examining) Yes, it appears to be on the same Royal elite of later date.



(Testimony of David A. Black.)

Q. And the final one is 7-I, which may or may not be identical with 7-F. No, it isn't. I will ask you about 7-I. Can you identify the typing on that?

A. (Witness examining) It is on an IBM elite also.

Q. I see. Thank you very much.

Now, just a few more questions. You did state that the signatures of Mr. Hedges and Miss Hendrickson appearing on the page we have numbered 8 in the meeting of December 29, 1948, was in different ink than the signature appearing elsewhere of meetings of the same date? A. Yes.

Q. In other words, Mr. Hedges' signature here is blue and elsewhere it is black, in one differential, is that correct? A. Yes.

Q. And Miss Hendrickson is a lighter blue than previous—— [207] A. Yes.

Q. ——than in others? A. Yes.

Q. You did testify, did you not, that in your opinion—it was your conclusion that this last page might have been mailed because it showed the folding marks and evidence of having been handled, is that correct? A. Yes.

Q. I think you stated, and if I misstate you, please correct me, that there are other pages in the minute book which appeared to have been mailed or—mailed, I think it was—or removed from the minute book or something of that kind; do you recall your testimony in that respect?

A. I think I said that there are other pages that had paper clip marks on them.

(Testimony of David A. Black.)

Q. Well, we have been over the paper clip. We don't have to repeat that. But did you notice any other pages, such as—particularly signature pages—that appeared to have been mailed? I don't mean to take the book from you in case you need it.

A. That's all right. I don't think I so testified.

Q. Did you make examination for that fact?

A. Yes.

Q. And what are your conclusions?

A. I believe I testified that there were no minutes that [208] had all of those conditions. That some minutes had some paper clip marks, but that no minutes had crinkling or creased initials or folding. There were other documents that did have paper clips, some of them crinkling, some of them the horizontal folding, and some of them erased material, but not of the same type of material as on page 8 of the questioned minutes of ten a.m., December 28, 1949.

Do you wish——

Q. The same type of material? What do you mean by that?

A. Well, there was no other place, first of all, where there were erased names or initials that were originally red pencil. There was some graphite or ordinary lead pencil erasures.

Q. Not to interrupt you, but isn't all you are telling His Honor and us is that there were in places throughout these minutes markings in red pencil or ordinary graphite with the initials of the

(Testimony of David A. Black.)

person who was to sign, isn't that what you are stating?

A. No, I think the effect of my testimony is that nothing else in this book was handled exactly like this page 8 of the minutes.

Q. All right. Explaining that, you told us that there were some graphite or red pencil marks, initials?

A. I stated that page 8 of the questioned first meeting minutes had red pencil initials erased. That is not true of any other page in the whole book.

Q. No, you are not questioning the signatures of the two signers on page 8, are you?

A. Questioning them in what way?

Q. As to their authenticity? A. No.

Q. And what conclusion are you trying to have us reach with respect to red pencil marks instead of graphite pencil marks?

A. Nothing except that this particular page was handled in a different way and that that is one of the characteristics of documents that are mailed out for signature.

Q. Well, now, what is this mailing business, when two people aren't in the same towns, sometimes we have to mail, don't you? A. Yes.

Q. Let me call your attention—just open the book a minute—waiver, March 18, 1949, are there any mailing marks on that? A. What marks?

Q. Mailing marks.

A. Well, I have that listed as having an erasure of the name Glen A. Taylor, which was originally

(Testimony of David A. Black.)

written in graphite pencil to the left of the name and erased.

Let me see if I have anything else on it. (Examining.) It also is crinkled and it also is folded in three [210] horizontally. That is a waiver and consent.

Q. In other words, your conclusion with respect to this page would be, would it not, that it was mailed to someone for signature? A. Yes.

Q. And that the name of the person signing his name was written in pencil to show him where to sign? A. Yes.

Mr. Dinkelspiel: Thank you. That is all.

\* \* \* \* \*

### GLEN A. TAYLOR

called as a witness on behalf of the Plaintiff, sworn.

The Court: State your name, please.

A. Glen A. Taylor.

### Direct Examination

Q. (By Mr. Herndon): Where do you reside, Mr. Taylor? A. In Tescumbia, Alabama.

Q. What is your occupation?

A. I am Vice President of Robbins Tire & Rubber Company, Incorporated.

Q. How long have you been Vice President of [211] Robbins Tire & Rubber Company, Incorporated? A. For a little over ten years.

Q. Where is the main plant of Robbins Tire & Rubber Company?

A. It is located in Tescumbia, Alabama.

(Testimony of Glen A. Taylor.)

Q. Would you tell us briefly a little bit about the business, who was president of the corporation?

A. Mr. Poncet Davis was president.

Q. And who was active operating head of the corporation?

A. I am active operating head of the company in Tescumbia.

Q. What are your functions? What are your duties as vice president of the Robbins Tire & Rubber Company, Incorporated?

A. I have over-all responsibility for the sales and for the office administration.

Q. Does the Robbins Tire & Rubber Company maintain an office other than in Tescumbia, Alabama?

A. Mr. Davis maintains his office in Akron, Ohio, as president of the company. The general offices and manufacturing plants are in Tescumbia.

Q. What does Robbins Tire & Rubber Company, Incorporated, manufacture, please?

A. We manufacture inner tubes, tread rubber for retreading of tires, tire repair materials, small tires for wheel toys such as coaster wagons, tri-cycles, rubber and vinyl plastic floor tile, wall tile, and all floor covering accessories.

The Court: All what? [212]

A. Floor covering accessories, such as cold base that goes on the wall and cold base corners, various accessories that are used with floor covering. Our sales are in excess of one million dollars per month.

Q. (By Mr. Herndon): Mr. Taylor, does the



(Testimony of Glen A. Taylor.)

Robbins Tire & Rubber Company, Incorporated, have an engineering department?

A. Yes, we do. That is headed up by Mr. Stanley Robbins, one of our vice presidents, who has charge of engineering and production.

Q. Are you familiar with the company known as Pacific Rubber Company? A. Yes, I am.

Q. Will you tell the Court, please, how you obtained that familiarity?

A. I was a director of the Pacific Rubber Company.

Q. Have you ever been an officer of Pacific Rubber Company? A. No, I never have.

Q. And tell us, if you know, Mr. Taylor, when you first became a director of Pacific Rubber Company?

A. Why, it was in December, 1948, I believe.

Q. And for the period subsequent to December, 1948, when you were elected director, a director of Pacific Rubber, did you serve in that capacity down to the present time?

A. Yes, I served in that capacity. I have never been notified that I am no longer a director. [213]

Q. Can you tell us who the directors were of Pacific Rubber Company, the names?

A. Yes. It was Mr. DeSellem and Mr. Condrey and myself.

Q. Do you know whether an individual by the name of Earl Booz was ever a director of Pacific Rubber?

A. No, he was never a director.

(Testimony of Glen A. Taylor.)

Q. Now, Mr. Taylor, I would like to refer to the period from December, 1948, when you testified you became a director of Pacific Rubber, up to January the 1st, 1951, and may I ask you whether you were ever notified during that period that I have just mentioned by Pacific Rubber or any other officers as to a time for holding directors' meetings or that a director's meeting would be held at a given time? A. Yes, I was.

Mr. Dinkelspiel: May I have the time the period covered, Mr. Reporter?

The Reporter: From December, 1948 up to January the 1st, 1951.

Q. (By Mr. Herndon): To your knowledge, from December, 1948, when you became a director, up to January the 1st, 1951, were you notified of all directors' meetings held during that period?

A. I was notified of what I assume to be all of them. I was notified frequently of meetings.

Q. Now, Mr. Taylor, can you tell the Court the last time [214] you attended a directors' meeting of Pacific Rubber Company?

A. I attended a directors' meeting on January 5, 1951. That was the only directors' meeting I attended.

Q. Mr. Taylor, I hand you what has been admitted in evidence as Plaintiff's Exhibit 7. Have you ever seen that document marked Plaintiff's Exhibit 7 before? A. Yes, I have.

Q. Can you tell the Court where that document came from, that is, Plaintiff's Exhibit 7?

(Testimony of Glen A. Taylor.)

A. This document came from our files in Tes-cumbia, our general files.

Q. And where did you receive the document from?

A. Where did I receive it from?

Q. Yes, where did you obtain the document?

A. I obtained it in late January, 1951.

Q. And from whom, please?

A. From Mr. John B. Condrey, through the mail.

Q. Now, Mr. Taylor, as to the date of the receipt of Plaintiff's Exhibit 7 in evidence, thereafter did you receive any other communication from the Pacific Rubber Company, any officer of Pacific Rubber Company, or any director of Pacific Rubber Company, with respect to any meetings or any business whatsoever?

A. I did not. This was the last communication I ever received from them. [215]

Q. Mr. Taylor, may I ask you, are you generally familiar with the contract which has been referred to in these trial proceedings as the Minnesota Synthetic contracts for the operation of certain synthetic rubber plants at Torrance, California?

A. Yes, in a general way.

Q. Do you have any knowledge as a director of Pacific Rubber Company when Pacific Rubber Company first acquired an interest in that contract identified as the Minnesota contract?

A. Why, it seems to me that was in late 1950.

Q. Were you ever present at any directors'

(Testimony of Glen A. Taylor.)

meeting of Pacific Rubber Company, as far as that goes, any stockholder meetings of Pacific Rubber Company, when that contract was discussed?

A. No, that contract was never discussed at the directors'-stockholders' meeting I attended.

Q. Mr. Taylor, going in the period now from January the 1st, 1951 up to the present, may I ask you, have you attended or have you been notified of any directors' meeting during that period just mentioned, that is, directors' meeting of Pacific Rubber Company?

A. That was the period from January 1st, 1951 up until the present time?

Q. Yes.

A. One meeting only, on January 5. [216]

Q. On January 5 of which year? A. 1951.

Q. As vice president of Robbins Tire & Rubber Company, Incorporated have you been notified of any stockholders' meeting of Pacific Rubber Company, for the same period, that is, from January 1st, 1951, up to the present?

A. Only one, that was on the same date, January 5, 1951.

Q. I take it, after January 5, 1951, you received no further notice of any directors' meeting?

A. No, I did not. That was the last meeting I knew anything about.

Q. Did you attend a stockholders' meeting on January 5, 1951? A. Yes, I did.

Q. And you also attended a directors' meeting?

A. That's right, I attended both of them.

(Testimony of Glen A. Taylor.)

Q. Who was present, Mr. Taylor, if you know, at the directors' meeting of Pacific Rubber Company held on January 5, 1951?

A. Well, it seems to me that present were Mr. DeSellem, Mr. Condrey, Mr. Pauley, Mr. Hedges, Mr. Bouchard, Mr. Davis and myself.

Q. Will you tell us, please, who was present at the stockholders' meeting that you attended on January the 5th, 1951, again if you know? [217]

A. It seems to me that it was the same personnel, with the exception that I do not believe that Mr. DeSellem was present, but I believe Mr. Booz was present.

Q. What was Mr. Booz's capacity with Pacific Rubber at the time?

A. He was, I believe, executive vice president or vice president, one or the other. [218]

\* \* \* \* \*

Q. Mr. Taylor, at any time during the course of the time you have served as director of the Pacific Rubber Company, have you ever given consent to the transfer of a contract known as the Minnesota contract for the operation of certain synthetic rubber plants at Torrance, California, any individual or any company or corporation?

A. Definitely not.

\* \* \* \* \*

Q. (By Mr. Herndon): Mr. Taylor, did you have knowledge that the so-called Minnesota contract was transferred by Pacific Rubber Company?

A. The first time that I had knowledge that



(Testimony of Glen A. Taylor.)

that contract had been transferred was in late 1942, or possibly early 1953.

Q. Is that 1942? [219]

A. 1952; late 1952 or early 1953.

Q. Very well. How did you obtain knowledge that the so-called Minnesota contract had been transferred by or sold by Pacific Rubber Company?

A. The first I ever heard of it was in a telephone conversation from Mr. Davis in Akron, Ohio, who called me at the plant and wanted to know if I knew anything about it, and asked me if I had signed anything to the effect. I told him I had not and that it was news to me, the first I had ever heard of it.

Q. What was the approximate time of this telephone conversation with Mr. Davis?

A. I can't remember the exact month, but it was either in November or possibly December, 1952.

Q. Now, Mr. Taylor, referring back first to the directors' meeting of Pacific Rubber Company on January 5, 1951, that you have testified was the last meeting you attended, do you recall whether or not there was any discussion with respect to the possible transfer or sale of the Minnesota contract by Pacific Rubber Company?

A. No discussion whatever, wasn't even mentioned in the meeting that I attended.

Q. Now, with respect to the stockholders' meeting which you testified that you attended on that same date, was there any mention made—— [220]

A. No mention whatever.

(Testimony of Glen A. Taylor.)

Q. Of this Minnesota contract?

A. No mention made of the synthetic rubber contract whatever.

Q. In your discussions with either the officers and directors of Pacific Rubber Company, or any employees, was any discussion or any conversation had with respect to a possible sale or transfer of the Minnesota contract by Pacific Rubber Company?

\* \* \* \* \*

Q. Mr. Taylor, during the course of either the directors' meeting or the stockholders' meeting held on January the 5th, 1951, in Oakland, at the offices of Pacific Rubber Company, by any chance was the name Bay Rubber Company, a partnership, ever mentioned?

A. No, it was not mentioned at all. [221]

Q. When did you first hear the name Bay Rubber Company?

A. The first I ever heard of Bay Rubber Company was after I had heard about the sale of synthetic rubber contract, so it must have been the very last of 1952 or possibly early 1953.

Q. Before that time, you knew nothing about the Bay Rubber Company or the facts surrounding this formation?

A. I had never heard of it.

Q. May I ask, do you recall when you left Oakland, California, after this stockholders' and directors' meetings on January 5, 1951, the approximate time?

(Testimony of Glen A. Taylor.)

A. Yes, I left the same day by commercial airline back to the factory on the evening of January 5.

Q. And do you know when the other individuals that were present at the stockholders' and directors' meetings when, whether they left the same day?

A. I have no knowledge when they left. I went to the airport and left immediately.

Q. Mr. Taylor, as vice president of Robbins Tire & Rubber Company, Incorporated, is it possible for you to state whether or not Robbins has ever received any money from the Bay Rubber Company?

A. I can state definitely that Robbins has not received any money from Bay Rubber Company.

Q. If the Robbins Tire & Rubber Company, Incorporated [222] had received any money from Bay Rubber Company, would you most likely know about it as vice president?

A. I would, I would probably know about it.

\* \* \* \* \*

Q. (By Mr. Herndon): Mr. Taylor, one more question. Since you left Oakland, California, on January 5, 1951, have you been back in the State of California?

A. I had not been back at all until last week when I came back for this trial, and after I had arrived was informed that it would not start until a few days later, and I had to return to the plant. I just arrived late last night, in fact about 2:30 or 3:00 o'clock this morning. I was delayed by the

(Testimony of Glen A. Taylor.)

storm. That is the second time I have been back since January 5, 1951.

Q. That is last week——

A. And this week.

Q. And this time today when you came this morning.

A. That's right, last week and last night.

Q. Very well.

Mr. Herndon: I have no further questions, your Honor. [223]

### Cross Examination

Q. (By Mr. Dinkelspiel): Mr. Taylor, as I understand your testimony, you hold an executive position with Robbins Tire & Rubber Company?

A. That's correct.

Q. That position is vice president?

A. That's correct.

Q. And is it a position that has responsibility attached to it? A. Yes.

Q. Do you take orders and give orders, orders for purchases and you give orders for purchases?

A. Why no, I don't do anything about purchasing, although I do oversee purchasing, yes, I will say that.

Q. Do you manage any of the operations?

A. Yes, I do.

Q. Having anything to do with the finances?

A. I have nothing to do with the finances.

Q. Nothing at all to do with finances?

A. No.

(Testimony of Glen A. Taylor.)

Q. By managing the operation, what do you mean?

A. I mean that I have the over-all responsibility for the sale of all our products and the office administration; that is, over sales promotion, sales, the handling of complaints on flooring, handling complaints of all our products, to see that the office routine is carried out, to [224] see that the mail is answered, the telephone is answered.

Q. And that's a management operation, in other words; is it a manufacturing operation?

A. No, I have nothing to do with the manufacturing. I have responsibility for the sales management and administration.

Q. For the sales management and administration. I see. To repeat, just so I am straight on it, you have nothing to do with the financing?

A. No, I do not.

Q. Are the finances of Robbins Company handled out of the Mayflower Hotel, which is in Akron, Ohio?

A. The finances are supervised by Mr. Poncet Davis.

Q. By supervised, couldn't we use a stronger word, aren't they handled by Mr. Davis?

A. Yes, you could; you could say that.

Q. You have nothing to say about that?

A. No, I do not.

Q. Has anybody else anything to say about it?

A. Mr. Davis has the over-all say-so about finances.



(Testimony of Glen A. Taylor.)

Q. And you have answered me that nobody else has anything to say about it?

A. Under Mr. Davis. I will say no one overrules Mr. Davis but that there are others in the handling of finances under his direction.

Q. What do you mean by—carrying out his instructions? [225] A. Yes.

Q. Now, Robbins Tire & Rubber had a substantial interest in, did it not, the Pacific Rubber Company? [225a] A. That's right.

Q. Or was that Mr. Davis who had the interest?

A. No, it was Robbins Tire and Rubber Company.

Q. Robbins Tire and Rubber Company had a substantial interest of approximately 41 percent in Pacific Rubber Company? A. That's right.

Mr. Archer: That's a defendant in this case.

Mr. Dinkelspiel: That's a defendant in this case and that's a corporation which Robbins had a substantial interest in.

Q. (By Mr. Dinkelspiel): Were you appointed by Robbins to represent it in the affairs of the Pacific Rubber Company?

A. I was appointed by Mr. Davis to represent Robbins.

Q. What form did that appointment take?

A. Why, it took the form of an appointment in a meeting in December 1948, when all three directors were appointed.

Q. That was a meeting where?

A. A meeting here in California.

(Testimony of Glen A. Taylor.)

Q. Were you here then?

A. No, I was not.

Q. You were told, how were you told you were a director of Pacific Rubber Company?

A. I don't recall exactly how I was told.

Q. When did you first learn about it? [226]

A. Well, shortly afterwards, and I don't recall the specific form or instrument in which I was told. I may have been told by Mr. Davis.

Q. You know how much money Pacific Rubber Company if any, put up—withdraw that question.

Do you know how much money Robbins Tire and Rubber Company put into Pacific Rubber Company? A. I do not.

Q. Do you know how much management it gave Pacific Rubber Company? [227]

\* \* \* \* \*

Q. (By Mr. Dinkelspiel): Did Robbins participate in the management of Pacific Rubber Company? A. Not to my knowledge.

Q. You wouldn't know, would you? Really, I am not trying to insult you, you are in a different branch of the business, you wouldn't know, would you?

A. I don't know about the extent of the management, no.

Q. I understood you attended no directors' meetings of the Pacific Rubber Company except one, and that was on January 5, 1951, is that correct?

A. That's correct.

(Testimony of Glen A. Taylor.)

Q. Did I understand you to say you didn't receive notice of meetings?

A. I said that I did receive notices of meetings, of all meetings.

Q. You signed many waivers of notice, isn't that correct? A. That's correct.

Q. And didn't attend the meeting?

A. That's right.

Q. Now, for example, there was produced by Robbins' counsel a document called Exhibit 7, Plaintiff's Exhibit 7. [228] The first, 7-A, is a letter addressed to you by Mr. Condrey, is that right?

A. That's right.

Q. When did you meet Mr. Condrey?

A. I met Mr. Condrey for the first time when I was here on January 5, attending the meeting.

Q. Attending the meeting. January 5, 1951.

A. 1951, that's right.

Q. That was the first time, wasn't it?

A. That's right.

Q. Now, 7-B purports to bear a signature of Glen A. Taylor; is that yours?

A. Yes, that's my signature.

Q. That's the waiver and consent to the holding of a special meeting of the Board of Directors of Pacific Rubber Company? A. That's right.

Q. What did you do with that, that document?

A. I believe I filed it.

Q. At whose instructions? A. Mr. Davis'.

Q. You didn't know what this was about, did you? A. Yes, I knew what it was about.

(Testimony of Glen A. Taylor.)

Q. Mr. Davis told you to file it?

A. That's right; that is the best of my recollection. [229]

Q. And not to go further in the matter, was that it?

A. Well, sometimes they sent me a copy, I may have mailed a copy, I don't remember.

Q. You don't remember?

A. No, but that is my signature.

Q. But to the best of your recollection it did not go back to the Pacific Rubber Company?

A. That's right.

Q. 7-H, the letter addressed to you by Pacific Tire and Rubber by John B. Condrey dated January 26, is that correct?

A. No, the letter is not addressed to me.

Q. That's right, it is addressed to Robbins Tire and Rubber Company, attention Mr. Poncet Davis, President.

A. That's right.

Q. Did you ever see that letter before?

A. I don't recall seeing that letter.

Q. Did you ever sign any documents on behalf of Robbins Tire and Rubber Company in connection with a management of Pacific Tire and Rubber—Pacific Rubber Company?

A. Will you please clarify what you mean by "management"?

Q. I will withdraw the question and give you the opportunity to look at some of these documents.

I show you a document, Exhibit 13, Plaintiff, between Mr. Pauley and the Inland Rubber Com-

(Testimony of Glen A. Taylor.)

pany, John Condrey, Robbins Tire and Rubber Company, and call your attention [230] to the signature page and ask you if your signature appears anywhere, either individually or on behalf of anybody?

Mr. Archer: Doesn't the document show, counsel?

Mr. Dinkelspiel: I suppose it does, but it's preliminary, your Honor. I will rephrase the question.

Q. There's a signature of Robbins Tire and Rubber Company on that page is there not?

A. Yes.

Q. By whom is that?

A. Poncet Davis, President.

\* \* \* \* \*

Q. (By Mr. Dinkelspiel): At any time did you sign any [231] contract in behalf of Robbins Tire and Rubber Company in relationship to the dealings or transactions involving Pacific Rubber Company?

A. I can't answer that. I wouldn't want to rely on my memory that far back.

Q. Well, would you say you signed any?

A. No, I will not say I signed any or I did not sign any.

Q. Do you recall any that you signed?

A. For Robbins, on behalf of Robbins?

Q. Yes. A. With Pacific?

Q. Yes. A. Rubber Company?

Q. That's right.

A. Well, I would say a waiver of notice of a meeting was a document.



(Testimony of Glen A. Taylor.)

Q. Apart from the waiver of notice of meeting?

A. That's right.

Q. Any others? A. Not that I recall.

Q. Did you ever send any letter signed by the Robbins Tire and Rubber Company by your signature? A. Oh, yes indeed, a great many.

Q. To Pacific Tire?

A. Pacific Rubber. [232]

Q. Pacific Rubber Company. A. Oh, yes.

Q. You did? A. Yes sir.

Q. Relating to what subject matter?

A. Oh, relating to the manufacture of inner tubes, sale of inner tubes.

Q. Anything with regard to any financial matters, such as the organization of Pacific Rubber Company or what transacted at its Directors' meetings or anything of that kind?

A. No, none that I recall.

Q. None that you recall. Now, I understand you to say that you first heard of the Bay Rubber Company sometime, you said, in 1952, late '52 or early '53?

A. That's to the best of my recollection. I was not much interested in Bay Rubber Company for the reason that Robbins was not interested in Bay, so I could be mistaken on the date. [233]

\* \* \* \* \*

Q. (By Mr. Dinkelspiel): Now, Mr. Taylor, to get back to what you did for Pacific Rubber Company, you attended one meeting, did you not, of the Board of Directors?

(Testimony of Glen A. Taylor.)

A. I have so testified.

Q. You attended none other?

A. Right.

Q. You signed several waivers of meetings?

A. That's correct.

Q. That's correct, without going into each and every one?     A. Yes.

Q. Now, the meeting you attended was on January 5, 1951, was it not?     A. That's right.

Q. That was a stockholder's meeting first, was it not?

A. It seems to me it was a directors' meeting first, although it may have been the other way around.

Q. Do you recall, or do you wish to refer to the minutes, whether any agreement was reached at first the stockholders' meeting as to the winding up and dissolution of Pacific Rubber Company?

A. Well, it's in the minutes; I don't know why I have to rely on my memory.

Q. A very good answer. Have you any independent recollection?

A. Certainly I do.

Q. What is your independent recollection as to what [234] transpired at the stockholders' meeting?

A. I can recall that the purpose of the meeting was the dissolution of the Pacific Rubber Company and that it was done at that meeting, but how and why I can't recall all that.

Q. Do you recall whether any discussion was had at that meeting with respect to offers to pur-

(Testimony of Glen A. Taylor.)

chase assets of Pacific Rubber Company by Mansfield Tire and Rubber Company or one of its subsidiaries?

Mr. Archer: What has that got to do with it?

Mr. Herndon: Objection again, your Honor, immaterial and irrelevant.

Mr. Dinkelspiel: It's preliminary, your Honor.

The Court: This is at the meeting?

Mr. Dinkelspiel: At this meeting.

The Court: He may answer.

A. (By the Witness): I don't recall that.

Q. (By Mr. Dinkelspiel): Do you recall whether Mr. Davis said at that meeting that he was not prepared to make a bid for the assets of Pacific Rubber Company?

A. No, I don't recall that. It seems to me Mr. Pauley did most of the talking at that meeting.

Q. You don't recall Mr. Davis having said anything of that character that I mentioned?

A. No, I do not. [235]

Q. Do you recall the directors' meeting?

A. Yes, I recall it.

Q. Now, the directors, did they not, determined to carry out the stockholders' instructions of winding up and dissolving the company; that you recall?

A. That's my recollection.

Q. And that meant, did it not, and it was so understood by you, that the substantial part, at least, of the assets of Pacific Rubber Company were to be delivered or sold and either the assets or the

(Testimony of Glen A. Taylor.)

proceeds delivered to Robbins Tire and Rubber Company and Condrey?

\* \* \* \* \*

Q. Mr. Taylor, Robbins Tire and Rubber Company, was, we have already found out, one of the two stockholders of Pacific Rubber Company, is that correct?     A. That's correct.

Q. And the other stockholder was Mr. Condrey?

A. That's right.

Q. And it is a fact, is it not, that upon the dissolution of the Pacific Rubber Company there was to be distributed to its stockholders certain assets and/or money? [236]

A. That's my understanding.

Q. Did you ever receive any such money yourself?     A. Robbins received some money.

Q. Yes.

A. From Pacific. I did not myself receive any, no.

Q. What part or any part did you have in the collection of those assets or money?

A. I had no part in it except that I happened to know as a matter of personal knowledge that Robbins Corporation did receive some money from Pacific.

Q. Isn't it a fact that Mr. Bouchard and Mr. Davis, were by action of the Robbins Tire and Rubber Company, appointed the representative of Robbins Tire and Rubber Company to handle the moneys and assets received?

A. That's correct, I believe.

(Testimony of Glen A. Taylor.)

Q. And you had no part of that?

A. No. [237]

\* \* \* \* \*

Q. Were you a director of Robbins Tire & Rubber Co.      A. Yes, I was and am.

Q. Were you present at that meeting when Mr. Davis and——      A. Yes.

Q. ——Mr. Bouchard were authorized to act for the company?      A. Yes. [240]

\* \* \* \* \*

Q. Actually you are not familiar with any of the financial side of Robbins Tire & Rubber Co. transactions?

A. No, I have testified that in the beginning I had nothing to do with the financial end of the company.

Q. You naturally have nothing to do with Mr. Poncet Davis's financial matters?

A. None whatever.

Q. Do you sign any checks for Robbins Tire & Rubber Co.?

A. On occasion when the controller is out of town, I am authorized to sign in an emergency.

Q. Did you sign any checks on Robbins Tire & Rubber Co. in favor of Mr. Davis?

A. I don't recall.

Mr. Dinkelspiel: That is all. [241]

#### Redirect Examination

Q. (By Mr. Herndon): Mr. Taylor, were you ever told at any time with respect to the Board of



(Testimony of Glen A. Taylor.)

Directors meetings of the Pacific Rubber Company that a Board of Directors meeting could be held without giving notice to the other directors?

A. No.

\* \* \* \* \*

Q. (By Mr. Herndon): Now, Mr. Taylor, in answer to one of Mr. Dinkelspiel's questions I believe you stated that [242] at the directors meeting Mr. Pauley did all the talking, is that correct?

A. That is my impression of the meeting, that he pretty much ran it, he did most of the talking.

Q. Well, as a director, didn't you deal with John Condrey?

A. Well, he was sitting there but he never said anything. Mr. Pauley did most of the talking.

Q. At the directors meeting Mr. Pauley did all the talking? A. That's right.

Q. How about the stockholders meeting?

A. The same thing. [343]

\* \* \* \* \*

(Whereupon the deposition of Mr. DeSellem was received in evidence and marked Plaintiff's Exhibit No. 28.) [250]

# PLAINTIFF'S EXHIBIT No. 28

[Title of District Court and Cause.]

DEPOSITION OF WESLEY H. DESELLEM

WESLEY H. DESELLEM

one of the defendants, being first duly cautioned and sworn by the notary public to tell the truth,

(Deposition of Wesley H. DeSellem.)

the whole truth, and nothing but the truth, testified as follows:

Examination by Mr. Bouchard

Q. (By Mr. Bouchard): Will you, for the record, please state your full name, home address and occupation?

A. Wesley H. DeSellem; the address is — the business address is all right?

Q. Yes.

A. 100 Bush Street, San Francisco; occupation, CPA.

Q. Certified public accountant? A. Yes.

Q. And are you associated with any firm?

A. Associated with Lybrand, Ross Bros. & Montgomery.

Q. And since what date have you been associated with them? A. December 15th, 1952.

Q. Prior to that time, what was your occupation or business?

A. I was vice-president and treasurer of the Pacific Tire & Rubber Company.

Q. Of Oakland, California?

A. Oakland, California.

Q. And that was a company that was organized on or about [4] January 15th, 1951?

A. That is correct.

Q. Prior to that time, who were you connected with?

A. I was vice-president, treasurer and director of Pacific Rubber Company.

(Deposition of Wesley H. DeSellem.)

Q. And that was a company, as I recall, that was organized about December 28th, 1948, in which the two stockholders were John B. Condrey and Robbins Tire and Rubber Company?

A. That is correct.

Q. Prior to your connection with that company, what was your occupation?

A. I was secretary-treasurer, I believe was the title, and director of Oakland Rubber Company.

Q. The Oakland Rubber Company was the predecessor of Pacific Rubber Company, was it not?

A. That is right.

Q. And how long had you been vice-president and secretary and treasurer of the Oakland Rubber Company? A. I was just secretary.

Q. You were just secretary? A. Yes.

Q. Pardon me.

A. Approximately four years. Prior to that time, I was controller of the company.

Q. In other words, you went to work for Oakland Rubber Company—the company that became known as Oakland Rubber Company, in what year?

A. May, 1945.

Q. When did you become secretary, do you recall? [5]

A. Approximately a year later.

Q. Now, the Oakland Rubber Company had been known for years as Pacific Rubber Company, had it not? A. That is correct.

Q. And in the latter part of the year 1948, it

(Deposition of Wesley H. DeSellem.)

changed its name from Pacific Rubber Company to Oakland Rubber Company?

A. That is correct.

Q. And what was the reason, if you know, for changing its name?

A. As far as I know, the successor company wanted to succeed to the name Pacific for reasons of brand names and advertising and good will.

Q. In other words, when Oakland consolidated, they sold just the assets to the new company; and the new company wanted the name Pacific, is that right?

A. That is correct.

Q. And so the only change in the old Pacific Rubber Company was just in the name change?

A. Yes.

Q. Calling it Oakland for that purpose, is that correct?

A. Well, the Oakland—so there was quite a change in the Oakland Rubber Company. It sold its assets to the new company, the Pacific Rubber Company.

Q. Well, the change in name—the purpose of the sale to the new company was, I think you testified, to succeed in using the name?

A. Yes, that is right.

Q. Mr. Hedges has the minute book of the Oakland Rubber Company on the way, which, I suppose, would give us a definite [6] answer to this question, Mr. DeSellem.

Well, maybe you can tell us as to who the prin-

(Deposition of Wesley H. DeSellem.)

principal stockholders of the Oakland Rubber Company were?

A. The principal stockholders were Edwin W. Pauley and some of his family associates, Poncet Davis; as I recall, altogether they owned about, oh, maybe 86%.

Q. Yes, my recollection is that—see if this is yours—that Mr. Pauley owned about 51 or 52%, Mr. Davis owned 35%; and the balance of 13 or 14% was owned by a lot of small stockholders, is that true? A. That is correct.

Q. Now, you are familiar with the fact that from the latter part of 1948 to December 28th, 1948, the Oakland Rubber Company sold its assets to Pacific Rubber Company, the newly formed corporation, are you not?

A. That is correct.

Q. There is in the minute book of Pacific Rubber Company, which Mr. Hedges has just handed me, what purports to be a copy of the sale agreement between Oakland Rubber Company and Pacific Rubber Company, dated December 29th, 1948.

It is signed by Oakland Rubber Company, by E. W. Booz, vice-president, and yourself as secretary, of Oakland. Do you recall that?

A. I recall the agreement.

Q. Do you recall that you executed the contract—that is, you and Mr. Booz executed the contract on behalf of Oakland? [7] A. Yes.

Q. Now, at the time that Oakland made the sale to Pacific Rubber Company, you knew, did you



(Deposition of Wesley H. DeSellem.)

not, that Oakland would sustain a loss upon that sale?      A. I did.

\* \* \* \* \*

Q. (By Mr. Bouchard): In connection with the sale, Oakland did sustain a loss, did it not?

A. Oakland did sustain a loss.

Q. Do you recall now the amount of that loss, roughly?

A. Oh, my recollection is \$600,000.00, roughly.

\* \* \* \* \*

Q. When did you resign, if you did resign, as secretary or as an employee of Oakland Rubber Company?

A. I don't remember the date.

Q. You became an officer of Pacific Rubber Company immediately upon its formation, did you not?      A. That is correct.

Q. And you were one of the original directors of Pacific Rubber Company, weren't you, in the articles of incorporation?

A. I am not sure that I was mentioned in the articles of incorporation.

Q. I call your attention, Mr. DeSellem, to a copy of the original articles of incorporation of Pacific Rubber Company, [14] and to the signature of V. Hendrickson and Orris R. Hedges.

A. Yes.

Q. As being named in the original articles as directors. Do you recall that, now?

A. I don't recall the form of those documents.

Q. At the time that you became an officer or an

(Deposition of Wesley H. DeSellem.)

employee or a director of Pacific Rubber Company, did you resign any position you had with the Oakland Rubber Company?

A. I am not sure when I resigned from the Oakland Rubber Company.

Q. You remained as a director of Pacific Rubber Company from the time of its organization, well, I guess, to the present time, isn't that so, or did you resign as a director? Do you know whether you have or not?

Mr. Hedges: Pacific Rubber Company?

Mr. Bouchard: Yes.

A. I don't recall whether I resigned as a director of Pacific Rubber Company. I think the company was dissolved. In any event, I was director up until the time of dissolution, as far as I know.

Q. It filed a certificate of intention to dissolve about the 10th of January, 1951. You did continue as a director after that date, did you not?

A. I did.

Q. Now, when the Pacific Rubber Company took over the assets of Oakland, Oakland had operated at 4901 East 12th Street, in Oakland, had it not?     A. Yes. [15]

Q. And Pacific Rubber Company continued to operate at the same address?

A. That is correct.

Q. Using the same facilities?

A. That is correct.

Q. And substantially the same employees, is that true?     A. That is true.

\* \* \* \* \*

(Deposition of Wesley H. DeSellem.)

Q. Now, when the company operated the Oakland Rubber Company, Mr. DeSellem, from whom did you take your instructions in connection with the performance of your duties?

A. I think they came from several sources; from both representatives of——. You are talking about Oakland now?

Q. Yes.

A. Both representatives of Mr. Pauley and Mr. Poncet Davis.

Q. You got some instructions, I assume, from [16] both Mr. Davis and Mr. Pauley, is that true?

A. The company had only a minor number of business transactions, I recall; and there were hardly any instructions involved.

Q. It was operated for several years as Pacific Rubber Company, was it not?

A. You are talking about Oakland Rubber Company prior to the time of the sale?

Q. That is right; that is right.

A. The early part of the time I was with Oakland—or Pacific Rubber Company, which became Oakland Rubber Company, Mr. Davis was president of the company.

Q. And you took some instructions from him, I assume?

A. I took a considerable number of instructions from him.

Q. Did you take any instructions from either Mr. Pauley or Mr. Cameron?

A. I probably was advised by them; but if there

(Deposition of Wesley H. DeSellem.)

was a case of any conflict between their suggestions and any standing orders of Mr. Davis, they were referred to Mr. Davis. He was president of the company.

Q. And his determination, I assume, was the one that you followed? A. Not always.

Q. Sometimes, then, you took the view that Mr. Pauley and Mr. Cameron had, is that correct?

A. Sometimes I took a neutral attitude, and did what I thought was best.

Q. You mean there were occasions then when you overruled [17] the principal stockholders, and you did what you thought was best, and were not governed by their views?

A. I don't think I overruled them—in effect overruled them. I did what I thought was for their best interests.

Q. Who was the production manager of Oakland Rubber Company and its predecessor?

A. Mr. Booz.

Q. That is Earl W. Booz? A. Correct.

Q. Now, Mr. Booz continued along as the production manager for Pacific Rubber Company, did he not? A. That is correct.

Q. And continued in that capacity during the entire time that Pacific Rubber Company operated the property at 4901 East 12th Street, didn't he?

A. That is correct.

Q. And even continued along for a time in such capacity with the new company, as I recall—

A. That is correct.

(Deposition of Wesley H. DeSellem.)

Q. (Continuing): —the Pacific Tire and Rubber Company. Now, who was the president, if you recall, of Pacific Rubber Company?

A. You are talking about Pacific Rubber Company now?

Q. Yes.

A. As of January, 1949? There was no president.

Q. Mr. Booz was the executive vice-president?

A. He was the executive vice-president.

Q. Now, during your employment by Pacific Rubber Company after it acquired Oakland's assets, from whom did you take instructions with respect to the performance of your duties?

A. The two principal stockholders were Mr. Condrey and [18] Mr. — well, Robbins Tire and Rubber Company, represented by Mr. Davis, Poncet Davis.

Q. What position did Mr. Condrey have with Pacific Rubber Company?

A. He was director and secretary.

Q. During the period of your employment at Pacific Rubber Company, did you ever take any instructions from either Mr. Pauley or Mr. Cameron with respect to the performance of your duties?

A. I wouldn't say that I took instructions from them. I listened to their advice.

Q. They gave you advice, did they, with respect to your side of the operations?

A. They did. \* \* \* \* \* [19]



(Deposition of Wesley H. DeSellem.)

Q. (By Mr. Bouchard): Mr. DeSellem, are you as a director and secretary of Pacific Rubber—were you familiar with the stock [31] ownership of Pacific Rubber Company?

A. This is Pacific Rubber Company? That wasn't Oakland Rubber Company?

Q. No, this is Pacific Rubber Company that succeeded to Oakland.

Mr. Hedges: Do you mean—

A. I wasn't secretary of Pacific Rubber Company that succeeded to Oakland Rubber Company.

Q. (By Mr. Bouchard): That is right; you were vice-president and secretary?

A. Vice-president and treasurer.

Q. And director? A. And director.

Q. And you are familiar with the fact that there were only two stockholders of that company—or John B. Condrey and Robbins Tire and Rubber Company? A. That is correct.

Q. Are you familiar with their stock ownership or percentages? A. I was.

Q. Do you recall that the percentage of the stock held by Mr. Condrey was 58.59701%; and that Robbins was 41.40299%? Do you recall that?

A. Those are the approximate percentages, as I recall it.

Q. Do you know how those percentages were arrived at?

A. I had nothing to do with the computation of them.

Q. You did not compute them? A. I did not.

(Deposition of Wesley H. DeSellem.)

Q. Do you know how they were arrived at? If you know? A. Not definitely, no. [32]

Q. Do you have any idea?

A. Why, I think they had a relation to prior ownership.

Q. You mean prior ownership between Mr. Pauley and Mr. Davis in Oakland? Is that what you mean? A. Yes. [33]

\* \* \* \* \*

Q. (By Mr. Bouchard): Mr. DeSellem, do you recall that during the month of June, the latter part of June, 1951, Pacific Tire & Rubber Company disbursed something like \$60,000.00 under the heading of management fees; \$30,250.00 to E. W. Pauley and associates, and the balance to Mr. Hoffman of Mansfield? Do you recall that?

A. I recall the management fees paid. They were paid—either paid or accrued in June of 1951.

Q. And paid by whom?

A. I think the amounts were approximately \$30,000.00 to the so-called Pauley group; and approximately \$15,000.00 to the management of either the Inland Rubber Corporation or Mansfield Tire & Rubber Company.

Q. Well, do you recall specifically that the check for the Pauley group—there was a check to E. W. Pauley and associates of \$30,250.00.

A. I don't recall exactly how the check was made out; but I know there was a check in about that amount.

Q. And was a similar amount given to either

(Deposition of Wesley H. DeSellem.)

Mr. Hoffman or the Mansfield Company or Inland?

A. It wasn't similar, no.

Q. What amount was given to them? [36]

A. I don't remember the exact amount.

Q. Didn't they on the books of Pacific Tire & Rubber Company get an equivalent amount?

A. They didn't get an equivalent amount in cash.

Q. How did they get it?

Q. (By Mr. Hedges): Did they get an equivalent amount? Do you know that in any way?

A. They got an equivalent—part of it in cash and part by credit against the merchandise they were purchasing from Pacific Tire & Rubber Company.

Q. (By Mr. Bouchard): So Pauley and associates got the \$30,250.00 in cash, and Hoffman or Mansfield got part in cash and part in an inventory or merchandise credit, is that correct?

A. That is correct.

Q. Yes. Now, do you recall, Mr. DeSellem, that at the time that money was disbursed to Mr. Pauley and for Pauley and associates, whether or not it was disbursed by Pacific Tire pursuant to any statement from E. W. Pauley and associates for services?

A. I don't recall.

Q. You had a check voucher, didn't you, when you issued checks of that sort?

A. The company did, yes.

Q. Do you remember, Mr. DeSellem, giving a deposition in the case of Robbins Tire and Rubber

(Deposition of Wesley H. DeSellem.)

Company, Plaintiff, versus Pacific Tire & Rubber Company, a case pending in the District Court of the United States, Northern District of California, [37] No. 32028, on the 9th day of May, 1953, in these same offices—that is, the offices of this firm—in which Mr. Hart took your deposition?

A. I recall the deposition.

Q. Do you recall on that occasion being examined by Mr. Clark, and the following questions asked you and the following answers given by you:

“Q. I hand you, Mr. DeSellem, a group of checks which have been marked ‘Plaintiff’s Exhibits 19a through to 19h for identification’; and call your attention to certain items:

“I call your attention to 19e, which appears to be a voucher, is that right?

“A. That is a check copy voucher.

“Q. A check copy voucher? A. Yes, sir.

“Q. And it states on there, ‘6/29, Fees per statement, \$30,250.00.’ What does this particular statement refer to?

“A. That refers to a statement submitted to the company by E. W. Pauley Associates.

“Q. Who directed the making of this voucher?

“A. I did.

“Q. You had before you at the time the statement—— A. I did.

“Q. (Continuing): ——that is referred to here?

“A. Yes.

“Q. Where is that statement now, do you know?

“A. I think it is attached to another—we used

(Deposition of Wesley H. DeSellem.)

another [38] check copy besides this. We have one that is filed numerically and another one filed alphabetically. That statement is attached to the alphabetical copy of the check copy.

“Q. This was then in payment of E. W. Pauley and Associates, is that right?

“A. That is correct, a statement to the Pacific Tire & Rubber Company.

“Q. To the Pacific Tire and Rubber Company for services of some kind? A. That is correct.”

Q. Do you recall those questions, and that you made those answers? A. I do.

Q. And they are a correct statement in answer to the questions?

A. I believe them to be correct.

Mr. Diehm: What page is that?

Mr. Bouchard: I am reading—I started, Mr. Diesm, from page 61, and part of page 62.

Q. Now, on what authority, Mr. DeSellem, did you issue this check to E. W. Pauley and Associates for \$30,250.00?

A. I talked to the representatives of both owners of the company about it.

Q. Do you mean Mr. Pauley and Mr. Hoffman representing Inland or——

A. I talked to Mr. Cameron, who was representing Mr. Pauley; and I talked to Mr. Hoffman, who was representing Inland Rubber Corporation.

Q. And they advised you or told you to issue those checks [39] for services, is that correct?

A. They did.



(Deposition of Wesley H. DeSellem.)

Mr. Bouchard: I will return this to you, Mr. Hedges. I am returning the balance sheet.

Q. Now, do you know of any other payments that were made either to Mr. Pauley and Associates or Mr. Pauley individually, or to Mr. Hoffman, or to Mansfield, or to Inland, of a similar kind other than the one we just talked about while you were treasurer of the company?

Mr. Hedges: What do you mean by a similar kind, Mr. Bouchard?

Mr. Bouchard: For management services.

A. I am not sure if there were any further payments made or not.

Q. Had there been made any prior to June of 1951?

A. No, there were none made prior to that time.

Q. Whether there were some made subsequently, you don't recall?           A. I don't recall.

Q. Now, Mr. DeSellem, I want to call your attention to what purports to be the minutes of a regular meeting of the board of directors of Pacific Rubber Company held on the 21st day of May, 1951, at the offices of Pacific Tire & Rubber Company, at which you and Mr. Condrey were present as directors, and Mr. Taylor was absent; and ask you if you will examine the minutes, if you will, please, and then tell whether that is your signature as chairman of that meeting?

(Document handed to witness.) [40]

A. That is my signature.

\* \* \* \* \*

(Deposition of Wesley H. DeSellem.)

Q. (By Mr. Bouchard): Mr. DeSellem, you were chairman of that meeting, and announced that the meeting was held for the purpose of adopting a resolution authorizing the officers of the corporation to enter into a contract or contracts with Bay Rubber Company, a co-partnership, for the sale, assignment and transfer of all of this corporation's interests in and to that certain agreement dated August 28th, 1950, between Minnesota Mining & Manufacturing Company, Pacific Rubber Company, and Reconstruction Finance Corporation; and of two other agreements, one dated September 20th, 1950, between Minnesota Mining & Manufacturing Company and Pacific Rubber Company, one commonly known as the "M-P Agreement," and the other as the "Patent Agreement," for the consideration of \$5,000.00.

Whose idea was it to sell these contracts to the Bay Rubber Company?

A. I was informed by the parties involved [41] in the sale of the assets of Pacific Rubber Company to Pacific Tire & Rubber Company, that this particular agreement was not to be involved in that sale; that Bay Rubber Company was being specifically formed to take over the performance of that agreement at the time Pacific Rubber Company went into dissolution.

Q. What person did you discuss it with?

A. I discussed it with Mr. Condrey, Mr. Hedges, Mr. Cameron, Mr. Pauley and Mr. Davis, and Mr. Taylor.

(Deposition of Wesley H. DeSellem.)

Q. When did you have this agreement—. Were they all together at this discussion?

A. They were all at the company's offices; and I don't think they were all together. The discussion was held at different intervals; and I don't think I was present at the time they were all together.

Q. When was it held?

A. The early part of January, 1951.

Q. And you say you discussed this with Mr. Davis and Mr. Taylor?      A. I did.

Q. And they told you, did they, that the Bay Rubber Company was being formed for the sole purpose of taking over the operation of—let us call it the synthetic plant, is that correct?

A. I don't know that that was their words. It was mentioned that Bay Rubber Company was going to take over the performance of this contract. [42]

Mr. Hedges: I think you misquoted him, Mr. Bouchard, when you said that was the sole purpose. I don't think he said that in his first answer.

Q. (By Mr. Bouchard): Well, tell us what either Mr. Davis or Mr. Taylor told you?

A. I don't remember their exact words; but I knew they were familiar with the—from my conversations with them, with the fact that Bay Rubber Company was going to take over their performance of this contract; and that Mr. Davis would have an ownership in Bay Rubber Company.

Q. All right. Now, fix as nearly as you can for

(Deposition of Wesley H. DeSellem.)

me the date when you talked to Mr. Taylor or to Mr. Davis?

A. The date of the directors' meeting, January, 1951, as I recall.

Q. Well, now——

A. Possibly there was another meeting in December, too; but I am not sure.

Mr. Hedges: You are referring, Mr. DeSellem, to the date of this special stockholders' meeting, or directors' meeting, at the plant? A. Yes.

Q. (By Mr. Bouchard): Now, there was an agreement——

A. I had talked to Mr. Davis at different times; but I believe it was on the same day. He was also at the plant in December, 1950, I think.

Q. That is all right. There was a meeting of the board of directors of Pacific Rubber Company on January 15, 1951, [43] as shown by the minutes. Was that the occasion, do you think, when you talked to him? A. Can I look at those?

Q. Sure. [44]

\* \* \* \* \*

The Witness: The meeting was January 5th.

Q. (By Mr. Bouchard): Wasn't that the meeting of January 15th? A. No.

Q. It was at a prior meeting?

A. I think it was the 5th of January.

Q. The 5th of January.

Mr. Hedges: A special stockholders' meeting. Wasn't it sent to everybody?

A. Yes, it is shown here. [45]

(Deposition of Wesley H. DeSellem.)

Q. (By Mr. Bouchard): If I recall your testimony correctly, Mr. DeSellem, and in view of your answer, you talked to Mr. Davis, or Mr. Taylor, or both of them, on or about January 5th, 1951?

A. That is correct.

Q. And they were at the plant on that occasion, were they?      A. Yes, sir.

Q. Now, I think you testified also that at the plant at the same time were Mr. Cameron and Mr. Pauley and Mr. Hedges and Mr. Condrey; and you also talked to them on the same occasion, is that true?

Mr. Hedges: He didn't mention Mr. Pauley, I don't believe.

A. I mentioned Mr. Pauley.

Mr. Hedges: Oh, did you?

Mr. Bouchard: Yes, he did.

A. I am not sure he was present at the plant at that time. I talked to him about it; but I am not sure it was on that day.

Q. You talked to Mr. Pauley, you talked to Mr. Cameron, and you talked to Mr. Condrey, did you?

A. Yes.

Q. At or about that date?

A. At or about that date.

Q. (By Mr. Bouchard): Earlier, or possibly at the same time. And did Mr. Pauley tell you that the Bay Rubber Company was going to take over this synthetic contract from Pacific?

A. He did.

Q. Did Mr. Cameron tell you that?



(Deposition of Wesley H. DeSellem.)

A. He did.

Q. And I think you have answered this question: You also said that Mr. Davis and Mr. Taylor told you that? [46]

A. I am not sure about Mr. Taylor; but I know I talked to Mr. Davis about it.

Q. All right. Now, I want to refer, Mr. DeSellem, again to the deposition which you gave in the offices of this law firm on the 9th of May, 1953, in the case of Robbins Tire and Rubber Company, Incorporated, Plaintiff, versus Pacific Tire & Rubber Company, action No. 32028, in the District Court of the United States, for the Northern District of California. You remember that occasion, do you? A. Yes.

Q. And I will ask you whether on that occasion you remember being asked these questions and making these answers——

Mr. Diehm: Page?

Mr. Bouchard: 79.

“Q. You stated sometime ago in your examination here that the Pacific Rubber Company intended to sell the Minnesota Mining contract to the Bay Rubber Company. You mean Bay Rubber Company, the partnership? “A. That’s right.

“Q. How do you know that?

“A. There was a discussion at the time of the dissolution of the corporation.

“Q. By whom? A. It was discussed by——

“Q. And you participated in the discussion, did you?

“A. It was discussed in front of me. I can’t

(Deposition of Wesley H. DeSellem.)

say that I participated in it very much; but it was necessary to—for [47] the company to divest itself of this contract in order to dissolve. Also it was necessary to obtain the consent of the Minnesota Mining Company to dissolve the Pacific Rubber Company; and that was the time that the matter was discussed; and that I was present; and that it was decided to sell the contract to the Bay Rubber Company.

“Q. Who else was present?

“A. As I recall, Mr. Cameron was present; and I believe Mr. Hedges was present; and I think at one time, Mr. Pauley was present.

“Q. That was all?

“A. That was all I remember. And Mr. Condrey.

“Q. And Mr. Condrey?

“A. I think Mr. Condrey.

“Q. No one else, as far as you recall?

“A. No, not as far as I know.”

Do you remember those questions, and giving those answers?

A. Not specifically, but probably so.

Q. If those questions were asked and you made those answers at that time, they were true and correct, were they not? A. I presume so.

Q. Who at the directors' meeting of May 21st, 1951, suggested that the price for selling this synthetic contract to Bay be \$5,000.00? How did you arrive—you and Mr. Condrey, as the sole directors present at the meeting, figured \$5,000.00 as the purchase price? [48]

A. My recollection of it was that in January of

(Deposition of Wesley H. DeSellem.)

1951 the price was to be a nominal amount, plus Bay Rubber Company assuming the obligations of the contract.

Q. All right. Now, are you familiar with those contracts with Minnesota Mining Company?

A. I am not familiar with all of the details of them.

Q. Well, are you familiar with the obligations that the Bay Rubber Company had under those contracts?

A. They had—. I am familiar with one of the obligations they had, yes.

Q. What was that?

A. An obligation—a commitment for \$350,000.00.

Q. Based on what?

A. That commitment was to put up that amount of working capital to offset any loss from operations that might be incurred at the outset of the program.

Q. Well, by that, do you mean—. What do you mean by the outset? You took it over in the fall, or September, 1950?

A. I believe they started to operate their plant in December, 1950; and in the meanwhile, they had all of the problems of getting the plant ready for operation.

Q. Then do you mean that under these agreements with Minnesota Mining and RFC, that Pacific Rubber Company had a contingent liability up to \$350,000.00 for working capital if it were re-

(Deposition of Wesley H. DeSellem.)

quired in connection with the operation of the plant?

A. That is my memory of the agreement, yes.

Q. Now, up until May 21st, 1951, had Pacific Rubber Company ever been called upon to put up anything by way of working capital?

A. We had already put up some funds to pay for the project engineer and his principal expenses.

Q. And who was that? A. Ray Kerr.

Q. In other words, the only expense that Pacific Rubber had in connection with the synthetic plant operation was in connection with perhaps Ray Kerr's salary and expenses, is that right?

A. In the summer and fall of 1950, the Pacific Rubber Company expended approximately \$50,000.00 on the project.

Q. In the summer of 1950?

A. In the summer and fall.

Q. In the summer and fall? A. Yes.

Q. The agreements with Minnesota Mining were not in effect with Pacific until August and September, is that correct?

A. I believe those to be the dates.

Q. Had Pacific Rubber Company put up this \$50,000.00 that you were talking about during the summer of 1950 prior to the execution of the formal contract?

A. Well, the money was expended by them prior and afterwards.

Q. And Pacific put that up—taken out of its own funds, was it? A. Yes, it did.

(Deposition of Wesley H. DeSellem.)

Q. And did it ever put up any other money? Was it ever called upon to put up any other money after that fifty thousand? [50]

A. Only, as far as I remember, to pay for the project engineer, Ray Kerr—his expenses, perhaps. I think there were several things that were incurred in connection with the negotiations for the contract.

Q. Paid to whom?

A. I don't remember the name.

Q. Well, to the attorneys, or were they engineers, or——

A. I think they were. I think one was to an attorney, as I recall. I don't remember the name.

Q. Do you recall who the attorney was that represented Pacific Rubber in your negotiations with Minnesota as to the contracts?

A. A large firm in Los Angeles. I think O'Melveny was part of the—O'Melveny & Myers. I believe that is the firm. That is my recollection.

Q. Now, on May 21st, 1951, when you and Mr. Condrey, as directors, sold this synthetic contract to the Bay Rubber Company for \$5,000.00, were you aware of the amount of income from January 15th, 1951, to May 21st, 1951, that Pacific would have been entitled to under that contract with Minnesota?

A. I don't think they were entitled to any income.

Q. Why not?

A. The company was in dissolution.



(Deposition of Wesley H. DeSellem.)

Q. Is it your idea that a copy in dissolution does not get the benefit under a contract to which it is a party?

A. I don't think so. Not that contract.

Q. If they owned a contract and not assigned it, the Bay [51] Rubber wouldn't have gotten that contract?

A. They couldn't have gotten the contract.

Q. Why not?

A. Because they had gone into dissolution; and that was—doesn't that stop them from performing under the contract?

Q. Is that your idea of the responsibility of a director in the corporation that when it dissolves, it is not entitled to any and all benefits it is entitled to under a contract?

A. It is my idea under the contract.

Q. Is that your idea of contracts generally, or are you just talking about this one specifically?

Mr. Hedges: He is talking about this one, Mr. Bouchard.

Mr. Bouchard: Let us get it from him; not from you.

Mr. Hedges: He is not a lawyer.

A. I think—. I am not an attorney, remember that; but I think if a company has a contract, and if by the provisions in it that it fails to—as in this case they went into dissolution, that it automatically becomes disqualified from enjoying any benefits of the contract.

Q. (By Mr. Bouchard): Under the contract

(Deposition of Wesley H. DeSellem.)

with Minnesota, isn't it true that Minnesota was the operating party to that contract, with the charge of the operation of the plant, wasn't it—the synthetic plant?

A. I think Minnesota and Pacific had a joint obligation under the contract.

Q. You think Pacific had some duties to perform in connection [52] with its operation of the contract? A. They did, yes.

Q. Pardon me? A. They did.

Q. Do you know what those duties were? Do you recall?

A. I couldn't specify them here. I would have to read the contract.

Q. You have read the contract, I take it, in times past?

A. I think I read the contract once about four and a half years ago.

Q. Well, was the \$5,000.00 purchase price, in the light of your testimony—was it fixed by you and Mr. Condrey, or were you told by Mr. Pauley and Mr. Cameron of Bay Rubber Company that this was what they would pay for it?

A. We were told by Mr. Cameron that that was what—. I was told by Mr. Cameron—I am not sure Mr. Condrey was there—that that would be the amount that the Bay Rubber was going to pay for the contract, plus assuming the obligation of performance.

Q. Now, that meeting of May 21st, Mr. DeSellem, Plaintiff's Exhibit 4, recites that you and Mr.

(Deposition of Wesley H. DeSellem.)

Condrey were the only ones present; Mr. Taylor, the third director, was absent.

Do you know whether or not any notice of this meeting was given to Mr. Taylor?   A. I do not.

Q. All you know, he wasn't present?

A. I know that.

Q. I notice that the minutes, these same minutes which you signed as chairman of the meeting, recite that this was [53] the regular meeting of the board of directors of Pacific Rubber Company.

Was that a regular meeting or a special meeting?

A. I wouldn't know—recall whether it was or not. If they were held on a regular meeting day, it was probably a regular meeting; but I am not sure it was held on a regular meeting day.

Q. Do you know what the regular meeting day was?   A. I don't recall at this time.

Q. As a matter of fact, it wasn't a regular meeting day.

Mr. Hedges: For what?

A. I think there were regular meetings established in the by-laws of the board of directors.

Q. (By Mr. Bouchard): All right. I will show you the by-laws of Pacific Rubber Company in the back of the minute book handed to me by your counsel; and ask you to find the place in there that fixes the regular meeting of the board of directors.

A. "Regular meetings of the board of directors shall be held at any place within or without the State which has been designated from time to time by resolution of the board or by written consent of

(Deposition of Wesley H. DeSellem.)

all members of the board. In the absence of such designation regular meetings shall be held at the principal office of the corporation. Special meetings of the board may be held either at a place so designated or at the principal office."

Q. Now, will you tell the reporter, please, Mr. DeSellem, [54] what that is?

A. This is page 9 of the by-laws, section 5.

Q. Section 5. Will you look at the by-laws, and tell me if you can find any other reference in them to the time of holding meetings?

A. There is a section with respect to special meetings.

Q. Well, I am not interested in those; unless you are, but I am not.

Will you see if there is any other place in the by-laws referring to the holding of special meetings.

A. I think that would take a considerable length of time. I have referred to one specifically; and there may be another one in there hid somewheres that I wouldn't know about.

Q. Well, take your time. There are separate headings that you will observe as to what the by-laws cover. Probably you will be able to find it. Take as much time as you think necessary.

A. Here is a reference to it under duties of the secretary.

Q. What is that?

A. "The secretary shall give, or cause to be given, notice of all the meetings of the shareholders

(Deposition of Wesley H. DeSellem.)

and of the board of directors required by the by-laws or by-law to be given."

Q. That is section what, Mr. DeSellem, or article?

A. Section 9, page 14. Here is a section with respect to adjourned meetings, under Section 12, page 11:

"A quorum of the directors may adjourn any directors' [55] meeting to meet again at a stated day and hour; provided, however, that in the absence of a quorum, a majority of the directors present at any directors' meeting, either regular or special, may adjourn from time to time until the time fixed for the next regular meeting of the board."

I guess it is not a quorum—a majority of the board.

Q. Yes. Mr. DeSellem, you have made a rather hasty examination of the by-laws; but the one section of the articles to which you referred was the only one in this examination that you found that has any reference to meetings of the board of directors, is that not true?

A. And this last section.

Q. Now, in none of those articles of the—provisions of the by-laws, does it fix a particular day of any month for holding regular meetings, does it?

A. Apparently not.

Q. When did you last examine this minute book, Mr. DeSellem? When did you last see it?

A. This morning.



(Deposition of Wesley H. DeSellem.)

Q. Here when your deposition was being taken?

A. Yes.

Q. How recently had you examined it before that time?     A. Yesterday afternoon.

Q. In preparation for the taking of your deposition, is that right?     A. I presume so.

Q. And did you go over it pretty carefully yesterday? [56]

A. No, I did not. I did not go over it carefully at all; but I was just refreshing my memory as to dates and as to when things happened.

Q. In going over the minutes yesterday, were you satisfied the minutes as reflected in the minute book correctly reflect what was done at each of the directors' meetings held?

A. I have no exception to the information I looked at.

Q. They appeared to you to correctly reflect what occurred at the meetings, is that right?

A. Yes.

Q. Now, I think that the minutes show—you have them before you, and you can check this and to see if it is not correct—that the minutes show that you were present at all of the directors' meetings except one, which was a special meeting on May 18th, 1951. Did the board of directors of Pacific Rubber Company meet regularly every month?     A. No, they did not.

Q. If I have correctly counted the number of directors' meetings as reflected by your book, Mr. DeSellem, they show that including the first meet-

(Deposition of Wesley H. DeSellem.)

ing of the board of directors on December 28th, 1948, and ending with the meeting, directors' meeting, May 21st, 1951, which was the last directors' meeting reflected in the book, some fourteen directors' meetings were held; and of those thirteen—or eleven, were special meetings; and there were only three regular meetings held: There were two regular meetings on January 15th, 1951, one at 10:00 o'clock in the morning, and one at 10:30; and the other one, [57] the last one, namely, May 21st, 1951. Will you look at those minutes and see if that is a correct statement?

A. Going back here to the by-laws——

Q. I just want to clear that up.

A. You asked me about regular meetings and special meetings?

Q. You can tell by looking at the beginning, you can tell what they are.

A. Start in 1949 or 1948?

Q. December 29th, 1948, is the first meeting of the board of directors?

A. That would be a regular meeting. That was called the first meeting.

Q. Yes, that is right.

A. Then there was a special meeting on the same day.

Q. All right. It might be a little easier for you, Mr. DeSellem, working backwards in the book—that may help you—just tell me from the minute book how many regular meetings are designated

(Deposition of Wesley H. DeSellem.)

by the book that were held by the board of directors, and the dates of them.

A. We have the first one, December 29th, 1948. January 15, 1951, appears to be the next one.

Q. All right.

A. There seem to be two meetings that day; two meetings on January 15th, 1951. A meeting on the 21st of May, which was designated as a regular meeting.

Q. Well, then, my statement appears to be correct, that [58] there were only three regular meetings of the board of directors held by the company from the time of its organization until and including the meeting of May 21st, 1951, is that correct?

A. Well, you can't—. January 15th, are you counting that as one, but actually there were two meetings.

Q. There were actually two meetings?

A. Yes. [59] \* \* \* \* \*

Q. (By Mr. Bouchard): I notice one of the clauses in this assignment, Mr. DeSellem, says: [60]

“Whereas, on January 15, 1951, Assignor agreed—” that is Pacific Rubber Company—“agreed to transfer all of its right, title and interest in and to said Agreement of August 28, 1950, to Bay Rubber Company when it could secure the consent of Minnesota Mining and Manufacturing Company to its agreements with it dated September 20, 1950; said transfer to be effective as of January 15, 1951, regardless of date of execution of formal assignment.”

(Deposition of Wesley H. DeSellem.)

Was that agreement on the part of Pacific Rubber Company made on January 15th, 1951, in writing or not, do you know?

A. As far as I know, it was not.

Q. It was not. When Pacific Rubber Company made its agreement with Minnesota Mining in September of 1950, and assumed the obligations you have talked about—the continued obligation which you say could run up to \$350,000.00, did not Minnesota require some security of that promise on the part of Pacific?

A. I don't recall whether it did or not.

Q. Do you recall whether or not Minnesota Mining Company required Oakland Rubber Company to subordinate its claim against Pacific on its note to any claim Minnesota might have against Pacific?

A. I don't recall.

Mr. Bouchard: I would like to see the minutes again, please.

Q. I call your attention, Mr. DeSellem, to the minutes of the special meeting of the Board of Directors of Pacific Rubber [61] Company, held at the plant on September 20th, 1950, and ask you if that is your signature as chairman of the meeting and Mr. Condrey's as secretary?

A. That is my signature.

Q. What is that? A. Yes.

Q. And you recognize Mr. Condrey's signature as secretary? A. Yes.

Q. Will you look at those minutes and see if they refresh your recollection as to whether or not

(Deposition of Wesley H. DeSellem.)

Minnesota required Oakland to subordinate its interest, its claim, against Pacific to that of Minnesota's in connection with the operation of this plant?

A. It recites in the minutes that the Minnesota Mining and Manufacturing Company required that Pacific Rubber Company enter into an agreement whereby Oakland Rubber Company agrees with Minnesota Mining and Manufacturing Company and Pacific Rubber Company to subordinate its claims against Pacific Rubber Company to Pacific Rubber Company's obligations to Minnesota Mining and Manufacturing Company.

Q. Yes. Now, having read that, Mr. DeSellem, does that refresh your recollection that Minnesota did require that?     A. It did require it.

Q. Yes. And do you now recall—. May I see the book again, please?

Do you now recall that at that meeting, you and Mr. Condrey as directors adopted a resolution authorizing Harry [62] Wright, vice-president, and John Condrey, secretary, to enter into an agreement of subordination with Minnesota Mining and Manufacturing and Oakland?     A. I do.

Q. And was such a subordination agreement entered into?     A. That I don't remember.

\* \* \* \* \*

Q. Now, Mr. DeSellem, I want to direct your attention to the minutes of the first meeting of the board of directors of Pacific Rubber Company, which was held on the 29th of December, 1948; and the minutes recite that there were present Orris R.



(Deposition of Wesley H. DeSellem.)

Hedges, Wesley H. DeSellem and V. Hendrickson, being all of the directors of the corporation named in its articles of incorporation; and they purport to have been signed by all three of them. No, I will take that back—by Mr. Hedges, [63] as chairman, and V. Hendrickson, as secretary.

Will you look at those minutes, look them over and tell me if you have any recollection as to whether or not they correctly report what was transacted at that first meeting.

(Document handed to witness.)

Mr. Hedges: You have already asked him that question once with respect to all of the minutes, and he said that they did.

Mr. Bouchard: Those are the minutes of the—the first meeting.

Mr. Hedges: Your question was as to all of the minutes; and your question was whether he had gone over the minute book, and whether they reflected in his opinion what transpired, and he said yes.

Mr. Bouchard: I think you are right, Mr. Hedges.

Q. And that answer goes for the minutes of the first meeting that I showed you, Mr. DeSellem?

A. I think so.

Q. All right. I had forgotten I had asked you that other question.

Now, I wish you would turn to the minutes of the directors' meeting on January 15th, 1951, at the first meeting that was held at 9:00 o'clock in the

(Deposition of Wesley H. DeSellem.)

morning, or 10:00 o'clock in the morning. Do you have them in front of you? A. I have.

Q. The minutes of the meeting of the directors of January 15th, at 10:00 o'clock in the morning, were signed by you and [64] Mr. Condrey as chairman and secretary, respectively?

A. That is correct.

Q. Now, all that was done at that meeting was to authorize the deposit of funds in the account of Pacific Rubber Company into the so-called Cameron Trustee account, is that not true?

A. That is correct.

Q. Now, the minutes show also that you and Mr. DeSellem—you and Mr. Condrey were the only directors, and Mr. Taylor was absent, is that correct? A. That is correct.

Q. Now, if you will turn to the minutes of the meeting of the same date, January 15th, held at 10:30—do you have those in front of you?

A. I have them in front of me.

Q. That likewise shows that you and Mr. Condrey were the only ones present; and that Mr. Taylor was absent, is that right?

A. That is correct.

Q. And the only business that was transacted by the directors at that meeting was to vote Mr. Pauley a 10% fee for services he had rendered in connection with the synthetic contract, is that not true?

A. That is true.

Q. Why were there two meetings held instead of having transacted that business in one meeting?

(Deposition of Wesley H. DeSellem.)

A. My recollection is that there were two meetings, that we had to have minutes of the resolution to go to the American Trust Company. [65]

Q. Which resolution had to go?

A. The first meeting.

Q. The one at 10:00 o'clock? A. Yes.

Q. And you mean you had to have that typed up and delivered before you could hold the second meeting?

A. Not necessarily before we held the second meeting. The two meetings were held so that we could have a separate meeting for the purpose of giving the American Trust Company a copy of the minutes of the meeting.

Q. Couldn't you have held that meeting—voted Mr. Pauley his fees at the first regular meeting at 10:00 o'clock, and giving the American Trust Company only the resolution in which that is recited?

Mr. Hedges: That is objected to as argumentative.

A. I suppose it could have been done; but this is the way we did it. [66]

\* \* \* \* \*

Q. (By Mr. Bouchard): What services had Mr. Pauley rendered Pacific Rubber Company which in your opinion justified voting him this 10%

A. He was responsible for the—he was primarily responsible for the company obtaining the contract.

Q. You mean the contract with Minnesota Mining? A. That is correct.

(Deposition of Wesley H. DeSellem.)

Q. And you as a director felt that those services were worth this 10% of the management fees received from that source?     A. I did.

Q. Whose suggestion was it that Mr. Pauley be voted this fee?

A. As I recall, Mr. Condrey had worked it out with Mr. Cameron.

Q. Mr. Condrey had worked out the deal with Mr. Cameron?     A. Yes.

Q. Mr. Cameron representing Mr. Pauley?

A. That's right.

Q. Do you know whether or not, Mr. DeSellem, at these meetings at which—these directors' meetings at which this was voted—whether or not either Mr. Pauley or Mr. Cameron was present at the meeting?

A. I don't believe they were. I couldn't be sure of it, but I don't believe they were.

Q. Let us go to the meeting of May 21st, 1951, when this synthetic contract was told to Bay: Were either Mr. Cameron [67] or Mr. Pauley present at the meeting?     A. They were not.

Q. This meeting held January 15th, 1951, in which the 10% fee was voted to Mr. Pauley, that was after Pacific Rubber had filed with the secretary of state of the State of California its election to dissolve, wasn't it?

A. That's right. I think that it was the same day it elected to dissolve, on January 15th. The notice was filed prior to that time; but I believe that was the date selected to dissolve.

Q. January 15th?     A. Yes.

(Deposition of Wesley H. DeSellem.)

Q. And did Pacific Rubber Company actually dissolve on January 15th?

A. They disposed of all of its assets, with the exception of obtaining consent of the Minnesota Mining and Manufacturing Company for the transfer of the synthetic plant to the Bay Rubber Company.

Q. On January 15th, it sold all of its assets to Pacific Tire and Rubber Company except the synthetic rubber plant.

A. They were supposed to do it. They declared it as a liquidating dividend to the stockholders.

Q. All right. Let us get that straight. I think you are right, Mr. DeSellem, but let us get it straight for the record. A. Yes.

Q. Pacific Rubber Company voted to liquidate—the stockholders and directors both voted to liquidate? A. That is correct. [68]

Q. And as a result of that vote to liquidate, it distributed all of its assets to the stockholders, Robbins and Condrey, isn't that true?

A. That is correct.

Q. And part of those assets, the plant and physical equipment, or all of the assets of Pacific except the synthetic plant, were sold to Pacific Tire & Rubber Company on January 15th?

A. All except the accounts receivable and cash. They were turned over to the trustee to collect and liquidate.

Q. They were distributed?

A. To the stockholders.

Q. To the stockholders. And the stockholders



(Deposition of Wesley H. DeSellem.)

appointed Mr. Cameron as trustee or as agent to collect those?      A. That is correct.

Q. That is true. The only assets remaining which had not been distributed to the stockholders was this synthetic contract?      A. That is right.

Q. And that was transferred on May 21st to the Bay Rubber Company. That is the history of it, isn't it?      A. That is correct.

Q. All right. Now, I notice, Mr. DeSellem—and for your information, it is true—I notice there was a special meeting of the board of directors of Pacific Rubber Company on the 18th of May, 1951; and a waiver of notice and consent to holding of special meeting of board of directors of Pacific Rubber Company which was signed by Mr. Booz and Mr. Condrey.

Mr. Booz was never a director of Pacific Rubber Company, [69] was he?

A. Not to my knowledge.

\* \* \* \* \*

Q. (By Mr. Bouchard): Just another question or two, Mr. DeSellem.

It is my recollection in all of these meetings of the directors' meetings you acted as chairman of the meetings, and [70] Mr. Condrey acted as secretary; and at nearly all of the special meetings, a waiver was sent out to all of the directors, and signed by them, including Mr. Taylor. The regular meetings—there were two of them—so denominated—of January 15th, 1951, and on May 21st, 1951, there appears to be no waiver and no notice given to Mr. Taylor.

(Deposition of Wesley H. DeSellem.)

Do you know why it was that Mr. Taylor was not notified of those two meetings of January 15th, 1951, and the one of May 21st, 1951?

A. I do not.                   \* \* \* \* \*

Q. Mr. DeSellem, I want to direct your attention again to the minutes of the first meeting of the board of directors held December 29th, 1948, which recite that you, Mr. Hedges, and V. Hendrickson, being all of the directors of the corporation, were present; and I want to call your attention to page 5, in which the following appears:

“The chairman stated that Article 3, Section 5 of the By-Laws of this corporation provided for the adopting of a resolution designating the time and place of holding regular [71] meetings of the Board of Directors, and upon motion duly made, seconded and unanimously carried, the following resolution was adopted:

“‘Resolved, that regular meetings of the Board of Directors of this corporation shall be held, without call, on the third Monday of each month at the hour of 10:00 o’clock a.m. at the principal office of the corporation located at 4901 East 12th Street, Oakland, California; provided, however, should said day fall upon a legal holiday, then said meeting shall be held at the same time on the next day thereafter pursuing which is not a legal holiday. Notice of all such regular meetings of the Board of Directors is hereby dispensed with.’”

Do you recall now, using the minutes of that meeting to refresh your recollection, whether that resolution was adopted at that first meeting?

(Deposition of Wesley H. DeSellem.)

A. That was adopted.

Q. It was adopted?                      A. Yes.

Q. And may I see them again, please? And do you recall at that same meeting, the minutes of that first meeting, that the chairman stated that it would be necessary for the corporation to execute a loan agreement with the American Trust Company with respect to the obligations of Oakland Rubber Company in the sum of \$166,666.80 and \$350,000.00, which obligation this corporation is assuming; and that a motion was made and a resolution adopted as follows in that meeting, and that [72] covered that last resolution there. Was that resolution adopted at the first meeting?                      A. It was.

Q. It was?                      A. Yes.

\* \* \* \* \*

Q. Mr. DeSellem, I want to ask you one question or two questions about Pacific Tire & Rubber Company.

My recollection is this company showed a pretty good profit for several months after its organization, January 15th, 1951, up to along through September or October of 1951. That is true, isn't it?

A. That is correct.

Q. And from that time on, for several months thereafter, every month it showed very substantial losses, is that true?

A. That is true. [73]

\* \* \* \* \*

Examination by Mr. Hedges

Mr. Hedges: I have one or two questions.

(Deposition of Wesley H. DeSellem.)

Q. Mr. DeSellem, I believe you stated that Glenn A. Taylor represented the Robbins Tire and Rubber Company on the board of directors of Pacific Rubber Company, is that correct?

A. That is correct.

Q. Did Mr. Taylor at any time take any active part in the operation of Pacific Rubber Company?

A. He had no active part whatsoever.

Q. Did he ever attend any meetings of the board of directors of Pacific Rubber Company?

A. Only one.

Q. And when was that, if you recall?

A. I believe the date was January 5th, 1951.

Q. That was a special meeting—that is the date of the special meeting of the stockholders that was held?

A. Yes.

Q. At which time it was decided to dissolve the company?

A. That is correct.

Q. I believe on questioning by Mr. Bouchard, you made a statement that all of the assets of Pacific Rubber Company [76] upon dissolution were transferred to the stockholders. Is that a correct statement?

A. Well, that is incorrect in one case. The contract with the Minnesota Mining and Manufacturing Company was not transferred on January 15th, 1951.

Q. Was it transferred at any other time, or distributed out at any other time to the stockholders?

A. The proceeds from it were distributed to the stockholders later.



(Deposition of Wesley H. DeSellem.)

Q. Yes, but not the contract itself?

A. Not the contract itself.

Q. Never at any time?

A. No. I don't suppose it could have been done.

Mr. Hedges: Very well. That is all, Mr. DeSellem. I don't have any further questions.

\* \* \* \* \*

Reexamination by Mr. Bouchard

Q. Now, you say that Mr. Taylor was not particularly active in the affairs of the company; and I think from what I noticed, [78] that is a fair statement.

Who were the people who were active in the affairs of Pacific Rubber Company?

A. The officers who directed the management of the company.

Q. Well, that would be Mr. Booz, the executive vice-president?      A. Yes.

Q. Yourself, as vice-president-treasurer, and Mr. Condrey as secretary?

A. Mr. Condrey as secretary; and Harry Wright at that time was vice-president in charge of sales.

Q. Who else was active in the operation of the company?

A. As far as the actual management of the company is concerned, we ran the company, the four of us.

Q. Was Mr. Pauley active in the management of the company?      A. No.

Q. Did he have anything to do with the management? Did he spend any time in its affairs?



(Deposition of Wesley H. DeSellem.)

A. I would say he gave advice as to policies.

Q. And his advice was pretty generally followed, wasn't it? A. Not always.

Q. Was Mr. Cameron active in the affairs of the company? A. In a similar way to Mr. Pauley.

Q. In advising on its operation, is that what you mean? A. That is correct.

Q. Is it a fact, is it not, that Mr. Cameron made very frequent trips from Los Angeles to Oakland in connection with the affairs of Pacific Rubber Company, though, did he not? [79]

A. He only did at certain intervals of time. We went long periods of time when practically the—the officers of the company practically operated the company by themselves. There would be intervals when he would be present.

Q. Didn't you have very frequent long distance telephone calls to Mr. Cameron and Mr. Pauley with respect to the affairs of Pacific Rubber Company?

A. Oh, I don't think they were what you would call frequent. Maybe a couple of times a month, or something like that. Mr. Pauley was a very heavy creditor of the company, and very interested—quite interested in the affairs of the company.

Q. Didn't Mr. Pauley as a matter of fact take a very substantial beneficial interest in Pacific Rubber Company?

A. His only interest at that time was a note of Oakland Rubber Company of which he owned some 51 or 52%.

(Deposition of Wesley H. DeSellem.)

Q. Isn't it a fact, Mr. DeSellem, that it is common knowledge of all of the people connected with the Oakland Rubber Company and Pacific Rubber Company that Mr. Condrey was holding his interest for Mr. Pauley's benefit?

Mr. Hedges: That is objected to as calling for a conclusion of this witness.

Mr. Bouchard: That is no conclusion. If he knows.

Q. Isn't that your understanding?

A. That is not my understanding.

Q. Is it your understand that Mr. Condrey was holding that interest for himself, and that he was the owner—and [80] that he was the sole owner of his stock interest in that company?

A. As far as I knew, he was the sole owner.

Q. And neither Mr. Pauley nor Mr. Cameron nor Mr. Condrey have ever done anything to you that would indicate otherwise?      A. No, sir.

\* \* \* \* \*

#### Reexamination By Mr. Hedges

Q. (By Mr. Hedges): Mr. DeSellem, Mr. Bouchard has asked you, wasn't it a fact that Mr. Pauley and Mr. Cameron made frequent calls to your plant. Isn't it a fact that Mr. Davis called almost every day?

A. He called—I would say he called more frequently than either Mr. Pauley or Mr. Cameron.

Q. And that was concerning the operation of the plant?

A. Concerning the operation of the company.

Mr. Hedges: That is all.

(Deposition of Wesley H. DeSellem.)

Reexamination By Mr. Bouchard

Q. (By Mr. Bouchard): Mr. Davis did not get as much information about the operations as you gave Mr. Pauley and Mr. Cameron, however, did he?

A. I think that Mr. Davis did—he was sent a complete monthly statement every month of all the financial operations of the company.

Q. And that is all he got, was the monthly statement, [81] wasn't it?

A. Oh, no. He called on the phone, and asked a large volume of questions every month about our operations.

Q. And did you answer them? A. Yes.

Mr. Hedges: You are talking about the time, now, prior to the time the company went into dissolution?

Mr. Bouchard: Yes.

Q. What about after the company went into dissolution?

A. He called, and I answered any questions with respect to the Pacific Rubber Company. I did not answer his questions with respect to the Pacific Tire & Rubber Company. [82]

\* \* \* \* \*

Reexamination By Mr. Hedges

Q. (By Mr. Hedges): Just one more question: Mr. Davis, representing Robbbins Tire & Rubber Company, had the habit of making collect calls when the Bay Rubber Company was in operation; and that was continued when the company became Pacific Tire and Rubber Company?

(Deposition of Wesley H. DeSellem.)

A. That is correct. That was one of the bones of contention, was the large telephone bill. Sometimes these calls ran as high as \$400.00 a month; and that was one of the bones of contention.

\* \* \* \* \*

[Endorsed]: Filed Dec. 16, 1955. [83]

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CLAUD L. CAMERON

previously sworn, resumed the stand and testified as follows:

\* \* \* \* \*

Direct Examination

The Court: State your name, please.

The Witness: Claud L. Cameron.

Q. (By Mr. Herndon): Mr. Cameron, what is your residence, please?

A. 232 South Hamilton Drive, Beverly Hills, California.

Q. What is your occupation?

A. I am in the employ of Edwin W. Pauley, independent [253] oil producer, and also a joint venturer in various enterprises.

The Court: Also what?

The Witness: A joint venturer in various enterprises.

Q. (By Mr. Herndon): In various enterprises with Mr. Pauley?     A. And others, yes.

Q. And others, yes. What is your address for business purposes?

A. 717 North Highland Avenue, Los Angeles, California.

(Testimony of Claud L. Cameron.)

Q. Do you share an office with Mr. Pauley, share general offices?      A. Yes.

Q. And your office is next to Mr. Pauley's at 717 North Highland Avenue in Los Angeles?

A. Yes.

Q. Very well. Mr. Cameron, are you familiar with the partnership, a limited partnership, formed under California law, known as the Bay Rubber Company?      A. Yes.

Q. Are you a member of that partnership by any chance?      A. Yes.

Q. Were you at any time appointed a trustee or agent for one John B. Condrey and the Robbins Tire & Rubber Company in connection with any matter?      A. Yes.

Q. Would you tell the Court, please, for whom and the [254] circumstances under which you were appointed agent or trustee? Just briefly.

The Court: Isn't there a document covering this?

Mr. Hedges: Yes, there is.

Mr. Herndon: Yes, there is, your Honor.

The Court: Why don't we get the document?

Mr. Hedges: I don't believe it was introduced.

Mr. Archer: Exhibit 14.

Mr. Clark: It's in evidence.

Q. (By Mr. Herndon): Mr. Cameron, I hand you what has been admitted in evidence as the plaintiff's Exhibit 14. Does that document, is that the evidence of your trusteeship in connection with the liquidation of Pacific Rubber Company for John B. Condrey and Robbins Tire & Rubber



(Testimony of Claud L. Cameron.)

Company, Incorporated? A. It is.

Q. When were you appointed trustee or agent for the purposes of the liquidation of Pacific Rubber Company?

Mr. Dinkelspiel: Otherwise than stated in this document?

Mr. Herndon: No, as stated in the document.

A. January 15, 1951. [255]

\* \* \* \* \*

Q. Mr. Cameron, in connection with your trusteeship, did you at any time have funds or income come through your trustee accounts from a certain contract known as Minnesota contract for the operation of certain synthetic rubber plants?

A. Yes, I did, the income derived from that contract through January 14, 1951.

Q. What was the date, please, January 14, 1951?

A. Through January 14, 1951.

Q. Do you have any knowledge as to what happened to the income from the Minnesota contract after January 16, 1951?

A. Yes, I do, but the date was subsequent to January [256] 14, 1951.

Q. Oh, I'm sorry, I misunderstood you; January 14, 1951, then.

A. It was paid to Bay Rubber Company.

Q. Do you have any knowledge as to when the amount was paid to Bay Rubber Company, this income from the Minnesota contract?

A. The first payment was about September, 1951.

(Testimony of Claud L. Cameron.)

Q. September, 1951. Very well. What were the circumstances, Mr. Cameron, to your knowledge, leading to the receipt of this income from the Minnesota contract by Bay Rubber Company?

A. I will have to go back to a meeting in Oakland early in January, 1951, when the agreement was reached by the stockholders of Pacific Rubber Company to liquidate. The arrangements prior to the liquidation were that the plant and inventories received by Robbins and Condrey in liquidation would be sold to a new corporation to be formed and owned by a subsidiary of Mansfield Tire & Rubber Company and by a partnership to be formed, the principal partners to be Mr. Pauley and Mr. Davis.

\* \* \* \* \*

A. (Continuing): Among the assets to be specifically excluded from the sale to the new corporation was the synthetic rubber contract. There was a definite reason for that. Mansfield Tire & Rubber Company was a participant in another——

The Court: Another what?

A. (Continuing): ——was a participant in another synthetic rubber contract. It was our understanding that the policy of the rubber reserve or RFC was not to look favorably upon or possibly not even allow one company to participate in more than one of the synthetic rubber contracts.

Discussion was had as to the assignment of the synthetic rubber contract to the contemplated partnership. There was considerable, let us say, head scratching about the accomplishment of such a

(Testimony of Claud L. Cameron.)

transfer because we thought it would involve the consent of rubber reserve or RFC and also the Minnesota Mining and Manufacturing Company, who were the operators of the plant. It was decided that every effort would be made to accomplish the transfer to the proposed partnership.

Q. (By Mr. Herndon): When you say every effort was made to accomplish the transfer to the proposed partnership, [258] between whom was that effort made, that is, Mr. Cameron, who are the individuals between whom discussions were held with respect to the transfer of the Minnesota contract?

A. I remember definitely a conversation with John Condrey and George Bouchard and Wesley DeSellem.

Q. Where there any other individuals that you recall at this time who were present during the course of those conversations?

A. I cannot definitely state to my knowledge that I discussed it with any others on that day, I believe January 5, 1951, in Oakland.

Q. And then you do fix the date as January 5, 1951, when those discussions were held with respect to a transfer of the synthetic contract, the Minnesota contract, to Bay Rubber Company?

A. That was my first discussion.

Q. Yes. Now, was this discussion held at a board of directors' meeting or stockholders' meeting, or was it merely an informal discussion? I am referring now to January 5, 1951.

(Testimony of Claud L. Cameron.)

A. It was — they were informal discussions, but on the same day that the stockholders' meeting and directors' meeting was held.

Q. Yes. But may I ask, Mr. Cameron, were you present at the directors' meeting of Pacific Rubber Company held in Oakland on January 5, 1951? [259]

A. I do not recall whether I was in the room at the time the directors' meeting was held or not; I was not a director.

Q. Then, of course, if you were not in the room you wouldn't recall any discussion at the directors' meeting with respect to the Minnesota contract, is that correct? It automatically follows.

A. I do not recollect any.

Q. Yes. Now, may I also ask you, Mr. Cameron, please, were you present at the stockholders' meeting of Pacific Rubber Company held in Oakland on January 5, 1951?

A. I do not recall whether I was in the room at the time the stockholders' meeting was held or not; I probably was.

Q. Then if you were not in the room you would, of course, know nothing about the conversations that took place in the room; that automatically follows also.

Mr. Cameron, may I also ask you, please, when did you first obtain knowledge that the Minnesota contract held either by Pacific Rubber Company or by you as trustee for John B. Condrey and

(Testimony of Claud L. Cameron.)

Robbins Tire and Rubber Company was assigned to the Bay Rubber Company?

A. It was never held by me as trustee.

Q. Very well. Subject to that correction, would you answer my question, please, if possible.

The Court: What is the question? Will you please [260] reframe it?

Q. (By Mr. Herndon): The question then is when did you first obtain knowledge that the Minnesota contract for the operation of the synthetic rubber plants in Torrance, California, and I am referring to the interest held by Pacific Rubber Company, was assigned to the Bay Rubber Company partnership, assigned or sold?

A. Oh, I imagine probably around June 1; I do not recall exactly.

Q. June 1 of which year, Mr. Cameron?

A. 1951.

Q. Around June 1 of 1951. How did you obtain that knowledge, please?

A. There was quite a prelude to that. A great deal of work was done with Rubber Reserve and RFC as to accomplishing the transfer from Pacific Rubber Company to Bay. I was in the office of James L. Hayes in Chicago some time around, oh, possibly April of 1951. Mr. Hayes and Mr. Pauley called John Conley of Minnesota Mining and Mr. Conley said that Minnesota Mining had come to the conclusion that they had a contract with Pauley and they were going to live up to it, and they said they



(Testimony of Claud L. Cameron.)

would hurry along the matter of making the assignment and try to accomplish it as soon as possible.

They informed us at that time also that they were [261] desirous of transferring the contract from Minnesota Mining to a subsidiary called Midland Rubber.

Q. Have you finished, Mr. Cameron?

A. Yes.

Q. Mr. Cameron, now I understand I believe the evidence indicates the transfer by Minnesota Mining and Manufacturing Company of their interest in the Minnesota contract, as we refer to it here, to the Midland Rubber Company. Now, however, I do not understand your answer with respect to what Minnesota had to do with the transfer of the interest of Pacific Rubber Company in that contract to Bay Rubber Company. Would you explain that again, please?

A. Rubber Reserve raised a question as to whether Pacific could transfer its interest to anyone. We gave serious consideration to cancelling Pacific's participation in the synthetic contract, cancelling it entirely.

Minnesota Mining, after a lot of legal study, came to the conclusion as far as they were concerned they were the recipient of a hundred per cent of the fees and they did not need the consent of Rubber Reserve to recognize Bay; and as Mr. Conley put it, Minnesota had a contract with Pauley and we are going to live up to it.

Q. Mr. Cameron, actually RFC or the Rubber

(Testimony of Claud L. Cameron.)

Reserve, as I understand it, is merely a wholly owned subsidiary of the Reconstruction Finance Corporation, never did consent [262] and to this day hasn't consented, has it, to the transfer of Pacific's interests, that is, the Pacific Rubber Company's interest, in that contract to Bay Rubber Company?      A. That is correct.

Q. And in fact Mr. Pauley hired, I believe, a lawyer in New York, our former Secretary of War, Royall, to try and obtain the permission of RFC to the assignment of the contract from Pacific Rubber to Bay Rubber Company, is that not true?

A. That is correct, but he was hired by Bay and not Mr. Pauley.

Q. That permission, as you stated, has never been obtained?      A. That's right.

Q. Very well, Mr. Cameron, are you familiar with the board of directors' meeting of the Pacific Rubber Company dated May 18, 1951, and also May 23, 1951—May 21, I am sorry—1951?

Mr. Hedges: Show him to which you refer, counsel.

Q. (By Mr. Herndon): Now, Mr. Cameron, I hand you what has been admitted in evidence as Plaintiff's Exhibit 15, which is the minute book *en toto* of the Pacific Rubber Company, and I refer you specifically to the minutes of the board of directors of Pacific Rubber Company for the 18th day of May, 1951, a copy of which has also been admitted in evidence individually as Plaintiff's Exhibit 19. [263]

(Testimony of Claud L. Cameron.)

May I ask whether you have previously seen those minutes?

A. I don't recollect that I have. [264]

\* \* \* \* \*

Q. Mr. Cameron, have you ever seen any documents with respect to the transfer of the Minnesota contract of Pacific Rubber Company to the Bay Rubber Company partnership?

A. I believe there is an assignment. I wonder if I could look at it, please.

(Counsel handing document to the witness.)

Q. (By Mr. Herndon): Mr. Cameron, I hand you what has been admitted in evidence as the Plaintiff's Exhibit 21, which is an assignment, a document showing an assignment from the Pacific Rubber Company to the Bay Rubber Company. I will ask you whether you have ever seen that document before?

A. Yes, I believe I have seen this document.

Q. Other than that document, which is the assignment just referred to, have you seen any other document with respect to the transfer of the Minnesota contract from Pacific Rubber Company to the Bay Rubber Company partnership?

A. I am quite sure that I saw and possibly signed a check—no, I don't believe I signed a check, but I knew of a check that was paid Pacific Rubber Company in consideration of this assignment. [265]

Q. What was the amount of that check?

A. \$5,000.

Q. By who—who was the payee on the check?

(Testimony of Claud L. Cameron.)

A. I believe Pacific Rubber Company.

Q. Who was the payor on the check, again if you know, of course?

A. Bay Rubber Company.

Q. Bay Rubber Company. Who ultimately, Mr. Cameron, received that \$5,000 check, or the proceeds of it?

A. John Condrey and Robbins Tire & Rubber Company.

Q. In other words, you received that \$5,000 check, or the proceeds of it, as trustee for Condrey and for Robbins Tire & Rubber Company, is that correct?

Mr. Dinkelspiel: Object to the question as calling for the opinion and conclusion of the witness.

The Court: He is asking if he received it.

Mr. Herndon: That's right, he received it.

Mr. Dinkelspiel: As trustee for someone. All right.

The Court: Did you receive it first, at all, did you get the check?

The Witness: The check would have been handled like any other payments to Pacific Rubber Company. They were endorsed and put in an account, entitled—in the bank account entitled “C. L. Cameron, Trustee for John Condrey and Robbins Tire & Rubber Company.” [266]

The Court: The checks were all endorsed that way?

The Witness: Yes, sir.

(Testimony of Claud L. Cameron.)

The Court: Then state again how they were endorsed.

The Witness: It would have been handled the same as any other check made to Pacific Rubber Company. For instance, in collection of accounts receivable, the check would be made in the name of Pacific, to the Pacific Rubber Company. The check would then be deposited in a back account of the American Trust Company, and the name of the account was C. L. Cameron, Trustee, for John Condrey and Robbins Tire & Rubber Company, and from that account, from time to time, as trustee, I made disbursements to the two beneficiaries.

Q. Mr. Cameron, you are a general partner of Bay Rubber Company, is that correct? A. Yes.

Q. Would you tell the Court, please, when you became a general partner, the approximate date?

A. There is a document here that is an amendment to the original Bay Rubber Company agreement that has the exact date.

Q. Yes. May I suggest it was some time during December, 1951; would that be approximate?

Mr. Dinkelspiel: Show him the document.

Mr. Archer: Exhibit 3.

Q. (By Mr. Herndon): Mr. Cameron, I hand you what has been admitted in evidence as Plaintiff's Exhibit 3. By the inspection of that document can you tell us when you were admitted as a general partner to the Bay Rubber partnership?

A. The document is dated the 28th day of December, 1951.



(Testimony of Claud L. Cameron.)

Q. And prior to that date what was your status with the Bay Rubber Company, if any?

A. Limited partner.

Q. You were a limited partner from the inception or formation of the partnership, is that correct?

A. Yes.

Q. Until that date shown on Plaintiff's Exhibit 3?

A. Yes. [268]

\* \* \* \* \*

Q. Yes, indeed, Mr. Cameron. Mr. Cameron, I hand you what has been marked for identification as Plaintiff's Exhibit 18, and will you state whether you have presently seen that document or can identify it?

A. (No response.)

Q. Mr. Cameron, may I describe the document in a little more detail, please?

Exhibit 18 is a letter written to Mr. Edwin W. Pauley on the letterhead of Pacific Rubber Company dated January 15, 1951, and signed on behalf of Pacific Rubber Company by John B. Condrey as secretary of that corporation.

Mr. Dinkelspiel: Could I see that, counsel, please?

Mr. Herndon: Yes, indeed, Mr. Dinkelspiel.

Mr. Dinkelspiel: That was, as you say, only offered for identification.

Mr. Herndon: In the lower left-hand corner the caption "Approved and accepted" bearing the signature, or what purports to be the signature, rather, of Edwin W. Pauley; then underneath that the caption "Approved Bay Rubber Company," and

(Testimony of Claud L. Cameron.)

bearing what purports to be the signature of Edwin W. Pauley on behalf of Bay Rubber Company.

Q. Now, Mr. Cameron, will you state, please, whether you have previously seen that document?

A. I cannot swear that I have seen this document, but I knew, however, the general terms of the agreement. [275]

\* \* \* \* \*

(Letter previously marked Plaintiff's Exhibit 18 for identification now received in evidence.)

PLAINTIFF'S EXHIBIT No. 18

Pacific Rubber Company  
Factory and General Offices  
4901 East Twelfth Street  
Oakland 1, California  
January 15, 1951

Mr. Edwin W. Pauley  
717 North Highland Avenue  
Los Angeles 38, California  
Dear Sir:

Pursuant to a Resolution of the Board of Directors of this corporation, duly and regularly adopted at a regular meeting of the Board of Directors on January 15, 1951, this corporation agreed to pay to you a commission equal to 10% of the net fees received by this corporation under the so-called Minnesota-Pacific Operating Agreement dated September 20, 1950. This letter, when accepted by you, will act as an agreement between us whereby you will receive the amount above specified as con-

sideration for services which you have rendered to this corporation. We have this day assigned all of our interest under the aforesaid Operating Agreement to Bay Rubber Company and we will pay the commission due you up to this date and Bay Rubber Company will pay the commissions accruing thereafter directly to you.

If the foregoing meets with your approval kindly indicate your acceptance in the space provided in the lower left-hand corner hereof.

PACIFIC RUBBER COMPANY

/s/ By JOHN B. CONDREY

Secretary

Approved and accepted:

/s/ EDWIN W. PAULEY

Approved:

BAY RUBBER COMPANY

/s/ By EDWIN W. PAULEY.

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Q. (By Mr. Herndon): All right, now, Mr. Cameron, to your knowledge was notice ever given to the Robbins Tire & Rubber Company, Incorporated, with respect to the assignment of the Pacific Rubber Company interest in the Minnesota contract? [278]

Mr. Hedges: By whom, Counsel?

Mr. Herndon: I said to his knowledge whether notice was ever given.

Mr. Hedges: By whom?

Q. (By Mr. Herndon): Did you give any notice, Mr. Cameron? A. No.

Q. At no time did you give notice?

(Testimony of Claud L. Cameron.)

Mr. Hedges: He has answered that.

Mr. Herndon: Very well.

Q. To your knowledge did any other individual give notice of the assignment of the contract to Bay Rubber Company? A. Yes.

Q. Who was that individual, please?

A. Mr. Edwin Pauley, I believe it was in April, 1951, telephoned to Mr. Poncet Davis advising him verbally that Minnesota Mining had agreed to honor the agreement that had been entered into and it was intended as fast as the mechanics with Minnesota could be accomplished to transfer to Bay Rubber Company.

I believe it was the next day.

The Court: Let's finish that first.

Read that up to then.

(Answer read by the Reporter.)

The Court: Transfer what, the Minnesota contract to Bay Rubber? [279] A. Yes, sir.

The Court: Go ahead, Mr. Cameron. You started to say "the next day."

A. The next day Mr. Davis called Mr. Pauley at the Ambassador East Hotel in Chicago and said he had checked with his tax men and they said it was O.K., to go ahead and make the transfer of the Minnesota contract to Bay.

Q. (By Mr. Herndon): Mr. Cameron, was this purported phone call of Mr. Pauley's on the date fixed by you, to your knowledge before or after the transfer of the Pacific Rubber Company interest in the Minnesota contract to Bay Rubber Company?

A. It was before.

(Testimony of Claud L. Cameron.)

Q. It was before the transfer? A. Yes.

\* \* \* \* \*

### Cross Examination

Q. (By Mr. Dinkelspiel): For purpose of clarification, Mr. Cameron, will you describe to His Honor what took place on January 5, 1951, with respect to meetings? You have testified that you were not at either the stockholders' meeting or the directors' meeting, to the best of your recollection, but that you were at some kind of a meeting or gathering. Will you explain that, please, to the Court?

A. From time to time during the recess, various groups would get together separately in various offices of the Pacific Rubber Company in Oakland for the purpose of discussing various mechanical details. Sometimes it would be one little group, sometimes another little group, sometimes Mr. Pauley and Mr. Davis would go into a room and have a discussion.

Q. Now, it was at one of these meetings or discussions that you were present at, you and Mr. George Bouchard, I think you said, that you discussed the formation or discussed the transfer, or there was discussed, a transfer of the synthetic [281] rubber contract? A. That is correct.

Q. Was there any discussion as to consideration?

A. Not specifically. I think everyone felt any nominal consideration that you would have in any document. Most of our discussions were around



(Testimony of Claud L. Cameron.)

the mechanical problems that we were going to be confronted with in getting the consent of Rubber Reserve and/or Minnesota.

Q. As part of this overall deal of selling assets and transferring the contracts?

A. That's correct.

Q. Now, Mr. Cameron, Mr. Bouchard is the gentleman in the courtroom who was then the attorney for Mr. Davis?

A. Correct.

Q. He is in the courtroom here?

A. Yes.

Q. You testified that the permission of the RFC had not been obtained, never was obtained. Will you state whether or not, nonetheless, all the payments were made from the Minnesota Mining & Manufacturing Company to Bay Rubber?

A. Yes, except those that went—up to the period through January 15, '41 (sic.) that were made to Pacific.

Q. But I mean payments under the contracts were made notwithstanding that the consent of the RFC for the transfer was not obtained? [282]

A. That is correct.

\* \* \* \* \*

Q. Has the contract now been terminated?

A. Yes, sir.

Q. And fully paid up?

A. Yes, sir.

Q. One further question for clarification: I think you have testified that all payments that went to Pacific for assets, including the \$5,000 consideration, was deposited in your trustee account?

A. Yes, sir.

(Testimony of Claud L. Cameron.)

Q. Payments under the synthetic rubber contracts made to Bay, were they similarly deposited?

A. No, sir.

Q. And how were they handled?

A. They were deposited in the Bay Rubber Co. bank account.

Q. And that applies to all payments except under the synthetic rubber contracts except those that were made before January 15, 1951? [283]

A. Yes, sir, and subsequently a substantial amount of those payments were disbursed to Mr. Poncet Davis and accepted by him.

The Court: What is that last?

The Witness: And accepted by him.

Mr. Dinkelspiel: We will bring that out in our case-in-chief, if your Honor please.

### Cross Examination

Q. (By Mr. Herndon): Mr. Cameron, just one further question, please, and we will be finished.

I would like you to state specifically again the individuals who were present at the conference you just referred to held in January 5, 1951 at the offices of the Pacific Rubber Company in answer to Mr. Dinkelspiel's question. Who were the individuals present when that was discussed?

The Court: When what was discussed?

Mr. Herndon: The transfer of the contract was discussed, Minnesota contract.

A. My participation was with Mr. Condrey and Mr. Bouchard.

(Testimony of Claud L. Cameron.)

Q. (By Mr. Herndon): Did you not state that there was a discussion held on January 5, 1951, in connection with the transfer of the Minnesota contract to Bay Rubber Co.?

A. That's the one I am referring to, sir.

Q. Again, please, between whom, which individuals, to your knowledge, now, if you know, was that discussion held? [284]

A. Specifically in my presence, with John Condrey and George Bouchard.

Q. John Condrey and George Bouchard?

A. Yes.

\* \* \* \* \*

### GEORGE BOUCHARD

called as a witness by the plaintiff; sworn.

The Court: State your name, please.

The Witness: George Bouchard.

### Direct Examination

Q. (By Mr. Clark): You are a member of the State Bar of California, are you not, Mr. Bouchard?      A. I am.

Q. And your office is where?

A. In Los Angeles.

Q. How long have you been a member of the State Bar of California?      A. Since 1928.

Q. Practicing in Los Angeles since that time?

A. Yes, sir.

Q. In 1951 you represented Robbins Tire & Rubber Co. as its [285] attorney in the various matters in California, did you not?      A. I did.

(Testimony of George Bouchard.)

Q. You heard the testimony given from the witness stand by Mr. Cameron just a few minutes ago about a conversation that he participated in with you and John Condrey in Oakland at the office of Pacific Rubber Company on June 5, 1951, did you?

A. January 5.

Q. Did you participate in that conversation?

A. I did not.

Q. Did you, on January 5 or at any other time prior to October 1952, discuss the Bay Rubber—the transfer of the Minnesota synthetic Mining contract to Bay Rubber Co.?

A. I did not.

Q. Anywhere?      A. Nowhere.

Q. Was the matter of the transfer of the Bay Rubber—of the Minnesota synthetic Mining contract to Bay Rubber mentioned at all in your hearing by anybody on January 5, 1951?

A. No, sir.

Q. What was the subject of discussion at the meetings that you were in on January 5, 1951, the principal subject?

A. The principal subject of discussion on the January 5th meeting related to an offer, a sealed offer that Inland Rubber Company had made to purchase all of the assets of Pacific [286] Rubber Company and the fact that Robbins Tire & Rubber Co., through Mr. Davis—

Q. Which was your client at the time, is that right?

A. That is correct,—had made or was to make a counter offer. And the upshot of that was the sub-

(Testimony of George Bouchard.)

ject of discussion at those all-day meetings at which I was present.

The Court: Who was to make a counter offer?

The Witness: Robbins Tire through Mr. Davis.

Mr. Clark: Robbins Tire & Rubber Co.

The Court: You mean Robbins Tire?

The Witness: Yes, your Honor, Robbins Tire & Rubber Co.

The Court: Or some subsidiary?

The Witness: No, that was a company. They have no subsidiaries, to my knowledge.

A. (Continuing): And the upshot of that was that Inland withdrew its sealed offer and Mr. Davis withdrew, or stated he had no offer to make, so neither of the deals went through.

Q. (By Mr. Clark): To your knowledge. When was the first time that the Minnesota Mining Company contract, the disposition to be made of it, was discussed in Oakland or anywhere else after January 5, 1951?

A. Well, it was discussed—well, the following week—we had been in Los Angeles the 6th and 7th of January—yes, I think the 6th and 7th of January and then we returned to San Francisco and we were here about the 12th—— [287]

Q. Let me interrupt you a moment, please. You say “we.” To whom do you refer?

A. Well, I refer to myself, Mr. Davis had left, and I was authorized to represent Robbins, Mr. Hedges, Cameron, Mr. Pauley, Mr. Ezra *Brien*.

Q. Who was he?



(Testimony of George Bouchard.)

A. He is a member of the Ohio bar and was president of Inland Rubber Company. I think those were all. Perhaps—no, I think those were all.

Q. Had all of those people, had they or had they not, all of them, been present at the meetings on January 5, 1951 in Oakland?

A. Let's see. Yes, they had been.

Q. When did they leave Oakland, if you know, to return to Los Angeles?

A. Well, we left Oakland, oh, I should say about 4:00 or 4:30 in the afternoon.

Q. Of what day?

A. Same day, January 5, and returned to Los Angeles that night in Mr. Pauley's personal plane.

Q. Now, we go back and pick up where I interrupted you, please. The discussion of the disposition to be made of the Minnesota synthetic Mining contract. You started to say something about one week after. Will you pick up there and go ahead?

A. Well, it was when we returned to San Francisco, the 12th and 13th, and we were here through the 15th or 16th, that the matter was discussed as to what should be done with this synthetic contract in the event that RFC objected to Pacific Rubber Company continuing any participation because it was in dissolution. That matter was discussed.

Q. And was the result of that discussion reduced to writing?      A. It was.

Q. I hand you Plaintiff's Exhibit 22 in evidence and ask you to state whether or not that is the writ-

(Testimony of George Bouchard.)

ing and agreement that resulted from the meetings that you have testified to as having occurred last.

A. Yes, sir. [289]

\* \* \* \* \*

Q. (By Mr. Clark): I hand you Plaintiff's Exhibit 2 in evidence and Plaintiff's Exhibit 3, in order to save time. Will you please examine them and let me ask you some questions about them. Examine the signatures particularly.

A. You said to examine the signatures?

Q. Yes. A. These are not signed?

Q. Not all of them. Well,——

A. This is a copy.

Q. All right. Exhibit 2 is the so-called partnership agreement with Bay Rubber Co., is it not?

A. It is.

Q. Were you present when that was executed?

A. Yes, I was.

Q. When did you first hear——

A. (Interrupting): May I qualify that to this extent, Mr. Clark?

Q. Yes.

A. I was present when it was executed by Mr. Pauley and Mr. Davis and Mr. Hedges. I don't believe that on the—because it was executed by them on the 7th day of January, I think it was signed perhaps by the others later who were [291] not present at this meeting.

Q. The instrument, you will notice, is dated January 8th. A. That's right.

Q. You say Mr. Davis and two or three others

(Testimony of George Bouchard.)

whose names you mentioned executed it on January 7?

A. Mr. Pauley, Mr. Davis, Mr. Hedges executed it on that day. Mr. Booz was not there nor Mr. Con-drey nor Mr. Cameron, and I don't think Mr. Pagen was there.

Q. Do you recall when Mr. Davis left Los Angeles?

A. Yes, he left the night of January 7.

Q. When did you first hear of the name Bay Rubber or Bay Rubber Co.?

A. I heard that such a company was to be formed on January 6th, 1951.

Q. From whom did you hear that?

A. I heard it from Mr. Bryan, who was the president of Inland; Mr. Hedges was present. Those two I remember definitely. Mr. Pauley and Mr. Davis were there for a little while; not too long on that first day of January 6th.

Q. Did you participate in the drafting of the articles of partnership?

A. I had nothing to do with the drafting of them, no.

Q. Well, you say that as if you had something to do with some part of it.

A. No, I had nothing to do with the drafting. The drafting [292] was done by Mr. Hedges and Mr. Bryan. They were submitted to me when they were prepared.

Mr. Clark: I am not pursuing anything with respect to Exhibit 3.

(Testimony of George Bouchard.)

Q. You were a director for a while, at any rate, of Pacific Rubber Company, were you not?

A. Not of Pacific Rubber Company. Pacific Tire & Rubber Company.

Q. Pacific Tire & Rubber Company; I'm wrong about that. Will you please state the circumstances in which you first heard of the transfer of the Minnesota synthetic Mining agreement to Bay Rubber Co. and the time when you first heard it, or the date, if you can?

A. The first time that I learned about it was approximately the 28th of September, 1952. I was in Oakland in the office of Pacific Tire & Rubber Company and I asked to see the minute book of Pacific Rubber Company. Mr. Condrey was not there on that day and the book was locked up, so I didn't see it on that day. But I went back on the next day, the 28th, Mr. Condrey showed me the minute book and permitted me to make whatever use of it I wanted and I read the minutes on the very first, the very first minutes in the book.

The Court: The minutes of the Pacific Rubber?

The Witness: Yes, sir.

The Court: That is Exhibit 15 here. [293]

Mr. Clark: Yes, sir.

A. (Continuing): The very first minutes in the book, as I recall it, were the minutes of May 21, 1951 in which the resolution was adopted by the two directors, Condrey and DeSellem, transferring the contract to Bay Rubber Co.

Q. (By Mr. Clark): At the risk of some repeti-



(Testimony of George Bouchard.)

tion, that is the first information you had of the transfer of the Minnesota synthetic Mining agreement? A. That is correct.

Q. To Bay Rubber. A. That is correct.

Q. Had you ever heard from any source prior to that time that the transfer would be made?

A. I had not.

Q. Had you come into contact between January 5 and May 21, 1951 with Mr. Pauley or Mr. Cameron or Mr. Condrey, Mr. DeSellem, Mr. Hedges?

A. Very frequently.

Q. Had you discussed business matters relating to Pacific Rubber Company, Bay Rubber Co., Pacific Tire & Rubber Company, with them when you met them?

A. I discussed matters in connection with Pacific Tire & Rubber Company.

Q. Pacific Tire & Rubber Company?

A. Yes. I don't think I ever discussed anything pertaining [294] to——

Q. (By Mr. Clark): How frequently would you say you saw or how many times would you say you saw those gentlemen that you discussed and talked with them from January 5 to May 21, 1951?

A. Well, I would say quite frequently, Mr. Clark, I am sure of at least once a month because we held directors' meetings of Pacific Tire & Rubber Company once a month at Oakland, and I think during that period I was present at all of them. I don't think Mr. Pauley was present at all of them; I'm sure Mr. Cameron was and that Mr. Condrey



(Testimony of George Bouchard.)

was there in the plant. I'm not sure that Mr. Hedges was present at all of them, but I saw them frequently.

Mr. Clark: Will the Court indulge me just a moment?

Q. When you first saw the minutes of May 21, 1951, after you had seen those, what did you do, Mr. Bouchard, with respect to the information that you had gained?

A. Well, I returned to Los Angeles and I telephoned Mr. Davis at Akron.

Mr. Clark: That's all. [295]

#### Cross Examination

Q. (By Mr. Dinkelspiel): Was it on September 28th, 1952 that you first saw the minute book?

A. I wouldn't say that was the first time I ever saw it, Mr. Dinkelspiel.

Q. Well, the first time that you saw the minutes of the meeting of May 21, 1951, is that correct?

A. I think that is correct, yes.

Q. And was there any particular reason why you were looking through the minute book on that date?

A. Yes.

Q. What was that reason?

A. Well, the reason was Mr. Davis had—was becoming dissatisfied with the operation of the new company, Pacific Tire & Rubber Company, as we felt that they were in default on some of their obligations to Robbins, and I wanted to examine the minute book of Pacific Rubber Company to see

(Testimony of George Bouchard.)

what, if anything, they contained with reference to the agreement to transfer by the stockholders.

Q. And subsequent——

The Court: Who was becoming—you say Davis was becoming dissatisfied; at what?

A. At the operation of the new company, Pacific Tire & Rubber Company, which had purchased the assets of Pacific Rubber.

The Court: Why did you look at the minutes of Pacific [296] Rubber?

A. Because I wanted to see what the minutes contained with respect to the sale to the new company, if there was anything. Plus the fact that we had some problems with respect to a tax refund and I wanted to see what the minutes showed as to that.

Q. (By Mr. Dinkelspiel): You were preparing a lawsuit, weren't you?

A. Well, we were talking about. I don't think any papers had been prepared, Mr. Dinkelspiel.

Q. You were talking about it for several years, about filing lawsuits, weren't you? A. No, no.

Q. I will withdraw that question.

Mr. Bouchard, the Robbins Tire & Rubber Co. was one of the stockholders of Pacific Rubber Company, right? A. Correct.

Q. And was there money owing to the Robbins Tire & Rubber Co. at the time you made this investigation of the minute books of Pacific Rubber Company? A. Was there money owing?

Mr. Clark: By whom, if I may ask?

Q. (By Mr. Dinkelspiel): From the liquidation.

(Testimony of George Bouchard.)

A. See if I get your question, Mr. Dinkelspiel. Did Robbins [297] Tire & Rubber Co. have any monies——

Q. Monies owed to it, to your knowledge, at the time you examined the Pacific Rubber Company books for the first time.

A. Not to my knowledge.

Q. I see. Well, what was there in the Pacific Rubber Company books which could possibly interest you in behalf of your clients in connection with the Pacific Tire & Rubber Company?

A. I don't know. That's what I wanted to examine them for, you see.

Q. But as one lawyer to another, how could there be anything in the Pacific Rubber Company books that would in any way interest you or your clients in respect to the Pacific Tire & Rubber Company?      A. I don't know.

Q. Well, that's a good answer.

Now, Mr. Bouchard, whom did you represent at that moment?      A. At which moment?

Q. That moment——      A. In October?

Q. That moment when you opened the minute book for the search of something you knew not what? You remember?      A. Yes.

Q. Whom did you represent? [298]

A. Robbins Tire & Rubber Company.

Q. Did you represent Mr. Davis?

A. I hadn't done anything for Mr. Davis—I hadn't done anything for Mr. Davis individually

(Testimony of George Bouchard.)

since the partnership agreement was drafted and signed by him.

Q. That was in January of 1951, January 7?

A. That is right. I think that's a correct statement.

Q. And from that time on you had done nothing for Mr. Davis?     A. Nothing that I recall.

Q. You didn't represent him in his tax difficulties or anything of that kind?     A. I did not.

Q. Did you represent him on the occasion that this document, Exhibit 22, January 13, 1951 was signed?

A. Is that the last exhibit, Mr. Dinkelspiel?

Q. Where you signed for Robbins Tire & Rubber.

A. Well, I can't say, Mr. Dinkelspiel, except to this extent: I don't know of anything that I did for Mr. Davis personally in a legal capacity after the partnership agreement was signed on January 7.

Q. To and including the present time?

A. I believe that is true.

Q. I assume you are paid compensation as counsel for Robbins Tire & Rubber Co.? [299]

A. Yes, sir.

Q. And that company pays your compensation?

A. It does.

Q. You are telling me that Mr. Davis hasn't paid you any compensation since January 7, 1951?

A. I believe that's true, Mr. Dinkelspiel. If he has, I don't recall what it is. If you have anything

(Testimony of George Bouchard.)

What indicates it, I will certainly know. But I don't recall anything.

Q. Do you distinguish carefully between the source of your payments as to whether it is Poncet Davis or Robbins Tire & Rubber Co. by Poncet Davis. A. Well, on my books I do, yes. [300]

Q. All right. Did you have any work to do in connection with the partnership agreement after it came into effect, did you consult with anybody in the interests of anybody?

A. Yes. I consulted, yes. I consulted with Mr. Pauley and I think I was employed by Mr. Pauley in connection with a proposed matter for Bay Rubber Company.

Q. Is that the only occasion you did any work in connection with Bay Rubber Company?

A. Assuming—it is the only one offhand I think of, Mr. Dinkelspiel. [301]

\* \* \* \* \*

Q. (By Mr. Dinkelspiel): Mr. Bouchard, directing your attention to the Bay Rubber Company, did you at any time give any legal advice or take any legal action in behalf of anybody in relation to matters of Bay Rubber Company?

A. Well, I gave Mr. Davis some advice the day that he signed it. I advised him not to sign it. I gave some advice to Mr. Pauley, who employed me in behalf of Bay, with respect to a matter they were contemplating but didn't go through with it.

I don't recall anything else, Mr. Dinkelspiel.

Q. You say you recall of no services rendered



(Testimony of George Bouchard.)

anybody except possibly for Mr. Pauley and the advice you gave Mr. Davis at the time the Bay Rubber Company was formed?

A. I believe that is true. I can't think of another thing I did for Mr. Davis.

Q. Now, let me direct your attention to the date of January 5, 1951, and ask you whether it is not a fact that Mr. Davis and you were both at the rubber company plant at Oakland for the better part of that day?

A. That's right.

Q. There were numerous—as Mr. Cameron testified, there were numerous conversations, caucuses, and what have you, carried on all through the day, were there not?

A. That's correct.

Q. Mr. Pauley and Mr. Davis in one room, [302] and you and somebody else in another room, and constant conversation, right?

A. That's correct.

Q. Now, the main subject matter of the conversation was, was it not, the transfer of the assets of Pacific Rubber Company?

A. That's right.

Q. And I believe you testified that there was an offer from Midland Rubber Company, a sealed offer, right?

A. That's correct.

Q. You said for all of the assets, did you not, in your testimony?

A. Well, I may have said "all the assets."

Q. You don't mean that, do you?

A. Well, I don't mean that, and I never saw the offer. It was sealed.

(Testimony of George Bouchard.)

Q. All right. You know, though, don't you, that it was for all of the assets except the synthetic rubber company contracts?

A. Well, I think that is a fair statement.

Q. That is a fair statement, isn't it?

A. Because I know that Robbins would not sell their interest in the synthetic contract. Now, I never saw the offer because it was sealed, that's all.

Q. You say that Robbins would not sell their interest. At any price? [303]

A. I didn't say that. But they were not for selling in this instance as part of the assets.

Q. At any price?

A. Oh, I don't know that. Everybody has got a price, Mr. Dinkelspiel, at which they will sell.

Q. Was it Robbins who wouldn't sell or Inland who wouldn't buy?

A. Well, I know Robbins would not sell. I don't know about Inland.

Q. You also know that the synthetic rubber contracts were kept out of that offer because Inland couldn't buy?

A. Well, I knew they were kept out of the offer. Now, I don't know what the reason was from Inland's point of view.

Q. You also knew that the rubber group, Mansfield-Inland — that group — had another synthetic rubber plant in operation?

A. No, I didn't know that.

Q. You did not know that?

A. No, I did not.

(Testimony of George Bouchard.)

Q. You never heard that at any time?

A. Yes, I heard it, but I didn't know it then.

Q. When did you first hear that?

A. Oh, I don't know, Mr. Dinkelspiel, when I first knew it.

Q. All right. Let me call your attention [304] to this letter of Edwin Pauley, approved and accepted by Poncet Davis, January 7, 1951, Exhibit 29.

This happens to be a copy, but if counsel won't object to me using it—it is a carbon——

Mr. Clark: It is in evidence already as the original.

Mr. Dinkelspiel: Yes.

Q. You have seen that before and you have testified with respect to it?      A. Yes.

Q. Now, it is a fact, is it not, that this letter refers to ten percent being held by Pagen as trustee?      A. Right.

Q. For officials, it says, of Minnesota Mining and Manufacturing Company?      A. Right.

Q. Directors, employees or nominees, correct?

A. Correct.

Q. A ten percent interest in Bay Rubber Company, right?      A. Right.

Q. A partnership that had been formed on January 7. So the same day, correct?      A. Right.

Q. You know, do you not, that subsequently this ten percent interest was transferred to a man named Hayes, part individually and part as trustee? [305]

(Testimony of George Bouchard.)

A. Not the ten percent.

Q. Nine percent.

A. Eight percent. Four percent to Hayes and four percent to Hayes, trustee.

Q. I see. And Mr. Hayes——

The Court: What was that?

A. Four percent to J. L. Hayes individually and four percent to J. L. Hayes, Trustee.

Q. (By Mr. Dinkelspiel): And Plaintiff's Exhibit No. 3 so provides, does it not? I show it to you, directing your attention to page 3 of the document (handing to witness). A. Yes, sir.

Q. And I think——

The Court: Is that the amended articles?

Mr. Dinkelspiel: Amended articles, Your Honor, December 28, 1951.

Q. Now, Mr. Hayes signed in both capacities, did he not? A. Apparently so.

Q. Now, did you ever see these amended partnership articles before? A. Oh, yes.

Q. Well, I wouldn't be surprised, Mr. Dinkelspiel, but what I saw it at the time it was drafted.

Q. Why did you see it?

A. Well, I'm just guessing now—— [306]

Q. Whom did you represent?

A. Well, I didn't represent anyone in connection with the execution of this, but I had represented Mr. Davis and I think when this was drafted perhaps Mr. Hedges gave it to me or maybe Mr. Davis sent it to me. I frankly don't know.

(Testimony of George Bouchard.)

Q. You did not represent Mr. Davis, then, did you?

A. I didn't get any compensation for anything I did on that. I don't think I represented him in connection with it. I may have written him a letter and enclosed it. I really don't know, Mr. Dinkelspiel.

Q. You didn't have much to do with the partnership agreement after its execution, did you?

A. That's correct.

Q. You didn't know then why a director, official of the Minnesota Mining and Manufacturing Company, was given a participation in this partnership, did you? A. Oh, yes, I knew.

Q. You did know? A. Yes.

Q. And that was part of what you found out when?

A. I found that out on January the 7th, this document that you have just shown me signed by Mr. Pauley and Mr. Davis.

Q. All right. You also knew that Mr. Hayes—. You knew on December 28, 1951 that Mr. Hayes was an official of the Minnesota Mining and Manufacturing Company? [307]

A. I knew he had some connection.

Q. Some connection with the company?

A. Yes.

Q. Now let us get back to the minute book and your investigation of the minute book of Pacific Rubber Company in behalf of your interest in Pacific Tire & Rubber Company, and you testified you



(Testimony of George Bouchard.)

saw the minutes of May 21, 1951. I assume, to reach the minutes of May 21, 1951, you perused the minutes prior to that time, isn't that correct, or did you just happen to hit on May 21?

A. No, I saw several of the minutes on that day.

Q. Did you read all of the minutes prior to that time?

A. I may have done so, Mr. Dinkelspiel.

Q. Don't you think that you must have done so if you were on an investigating tour?

A. I think probably I did.

Q. Well, let's assume that you did, for the purpose of the next question, and if you didn't you can correct me. Did you also read the by-laws?

A. I do not think that I did.

Q. And I suppose you did not bother reading the articles of incorporation?

A. I don't think so.

Q. Referring to the minutes of the first meeting, the organization meeting as we lawyers sometimes call it, the first [308] meeting of the board which has been lettered in pencil in the upper right-hand corner "1" to "8." I will ask you whether those minutes were the minutes you saw when you read that book, if you can tell me?

A. Mr. Dinkelspiel, frankly I don't know.

Q. You can't answer me now whether or not those were the minutes or some other minutes were there instead?

A. I really couldn't tell you, I frankly can't.

Q. I see. But on this date, in 1952, you recollect

(Testimony of George Bouchard.)

you went through the minute book for the purpose of finding out whether there was something that interested your interests, let's say, in Pacific Tire & Rubber Company?      A. Yes.

Q. And you happened on something, I suppose, that interested Mr. Davis, or Robbins Tire & Rubber Company, is that right?

A. Well, I found two things that I thought were of interest in the book.

Q. Now, to get back, Mr. Bouchard, to your conversation with Mr. Davis which you mentioned a few minutes ago before or about the time he assigned the Bay Rubber Company contract. It is true, is it not, that you said to Mr. Davis at that time—and it is in the presence of others so it is not in the nature of privileged communication—that he was foolish to sign the Bay Rubber contract because that deprived him of [309] a voice in management, isn't that correct?      A. That is correct.

Q. And Mr. Davis signed the contract in your presence?      A. That is right.

Q. All right. Immediately after that advice was given?

A. No. Quite some time after, as a result of a conversation between Mr. Davis and Mr. Pauley and myself.

Q. Now, let's get this straight. You gave this advice at what time of day, if you can recall, and where?

A. I gave the advice to Mr. Davis from my home on January 7, which was a Sunday morning, and I

(Testimony of George Bouchard.)

called him at the Ambassador Hotel where he was staying. He had not been in Mr. Pauley's office the afternoon, where this contract was shown to me, and we were to meet at Mr. Pauley's office. I called him from my home at the hotel and told him about the contract and that I had read it and that in my judgment he was foolish if he signed it because it deprived him of any voice in management.

The Court: You are speaking of what contract?

A. The articles—the Bay Rubber partnership agreement.

Q. (By Mr. Dinkelspiel): All right. Now, that, of course, was out of the presence—. That is advice you gave Mr. Davis not in the presence of Mr. Hedges or Mr. Pauley; that advice was over the telephone to Mr. Davis?

A. On that occasion, it was.

Q. All right. [310]

There was another occasion, was there not, which was immediately before the signing of the partnership articles? A. That's right.

Q. When you repeated that advice?

A. That is right. I got there before Mr. Davis and told Mr. Pauley I had given Mr. Davis that advice. And then I gave it to him in the presence of Mr. Pauley and Mr. Davis and myself at Mr. Pauley's office.

Q. And Mr. Hedges?

A. No, I don't think Mr. Hedges was present. I don't recall that he was present.

Q. You state positively that he was not?

(Testimony of George Bouchard.)

A. I won't say positively. He may have been. Mr. Hedges was there and he may have been present, I wouldn't be sure.

Q. Now, just before—and I mean an instant before Mr. Davis signed that document—you repeated you advice to him, did you not?

A. Well, I don't recall, Mr. Dinkelspiel. I had given it to him two or three times, and whether I repeated it the minute before he put his signature on the document, I don't know.

Q. Well, let's say closely connected in point of time with his signing of the document?

A. It might have been.

Q. What is your best recollection of it?

A. Well, frankly——. [311]

Q. It was or was not?

A. I frankly don't have any recollection about it. We were in Mr. Pauley's office for over an hour and a half talking about it, and I may have, when he put his name on it, stated: "I still think you are foolish to do it." I don't recall, maybe I did.

Q. Now, you stated that you did not represent Mr. Davis in any matter since January 7, 1951. Were you still friendly with him?

A. Mr. Davis?

Q. Yes.            A. Yes.

Q. Did you see quite a bit of him?            A. No.

Q. Did you do any work for Robbins Tire & Rubber?

A. I don't believe that I did. Well, yes, I did. I did some work for Mr. Davis, in this respect, Mr.



(Testimony of George Bouchard.)

Dinkelspiel, I never saw Mr. Davis after he left here on January 7 until he returned to California some time in October of '52.

Q. Is that when that litigation was going on?

A. No, it was—the litigation didn't start until November, I believe.

Q. And then you were here and you were in the Federal Court here about, some time after November, were you not?

A. Yes, we were.

Q. In matters involving Robbins Tire & Rubber? [312]

Q. And Poncet Davis?

A. No, I don't think Mr. Davis was in it.

Q. Did Mr. Davis ever mention to you that he had received substantial sums of money from Bay Rubber Company?

A. He never did.

Q. He never told you that?

A. Well, he didn't tell me at the time he received them. I later learned that he had, yes.

Q. How much later?

A. Well, my best recollection that I now have is that I learned that he had a distribution from Bay Rubber in the year 1951, and I think I learned that, oh, during the course of that litigation, which was subsequent—which was in 1953.

Q. All right. But you examined, I understand, the books of Pacific Rubber Company on September 28 or thereabouts, in 1952, and at that time you ran across a transfer of the—the minutes, rather, with respect to the transfer from Pacific Rubber Company to Bay Rubber Company of synthetic



(Testimony of George Bouchard.)

rubber contracts. Did you tell Mr. Davis of your discovery?

A. I did, about the first of October of '52.

Q. About the first of October, 1952?

A. That is correct.

Q. And were you in communication with him on that subject matter on more than one occasion after that time?

A. Well, I haven't any definite recollection of it, but [313] I wouldn't be surprised if I did.

Q. Mr. Davis was then president of Robbins Tire & Rubber, was he not? A. He was.

Q. And he remained president up to the present time? A. That's right.

Q. He still is, right? A. Yes.

Q. Now, this particular lawsuit was filed, was it not, more than two years after your discovery?

A. It was filed the summer—yes, that's right.

Q. All right. Now, Mr. Bouchard, one more question, is it not a fact to your knowledge that Bay Rubber Company and Inland Rubber Company caused Pacific Tire and Rubber Company, of which you are a director, to be formed?

A. That's right.

Q. To form and to acquire assets, the plant across the Bay and other assets, from the Pacific Rubber Company? A. That's right.

Q. Indirectly through the dissolution and the trusteeship of Mr. Cameron? A. Yes.

The Court: Just a moment. Read those last two questions.

(Testimony of George Bouchard.)

(The Reporter read: "Is it not a fact to your knowledge that Bay Rubber Company and Inland Rubber Company [314] caused Pacific Tire and Rubber Company, of which you are a director, to be formed?

A. That's right.")

The Witness: Let me qualify that, if I may. The answer is, as I gave it to you, Yes, I knew that Bay and Inland did, but I think if you will look at the agreements in evidence—I have forgotten their numbers—they are dated January 7, '51—the agreement to form Pacific Tire & Rubber Company is not an agreement between Inland and Bay Rubber Company. I don't believe you will find the word "Bay Rubber Company" used in the documents. I think the agreement was between Inland Rubber Company and Edwin Pauley and Poncet Davis and I have forgotten who else might have been named. I think you will not find the name "Bay Rubber Company" used in the agreement.

Q. (By Mr. Dinkelspiel): Well, there was an agreement among interested parties to form Pacific Tire & Rubber Company, which was in turn to acquire the plant and facilities of Pacific Rubber Company?

A. That's correct.

Q. Passing for the moment who did it, the documents speak for themselves.

A. Yes.

Q. Now, is it not a fact that one-half of the group that was going to form this new company was the so-called [315] Mansfield Tire & Rubber Company group?

A. That is right.

(Testimony of George Bouchard.)

Q. A wholly owned subsidiary of which is Inland? A. That's right.

Q. And is it not a fact that Mr. Hoffman and Mr. Bryan, Mr. Hoffman, vice-president of Mansfield, and Mr. Bryan, attorney and president of Inland, said that they would not form this new corporation if Poncet Davis had any part in the management?

A. They didn't say it to me prior to January 6, 1951. They apparently had said it.

Q. And you knew they said it?

A. I knew they had said it, but I didn't know that until January 6, 1951.

Q. And that's the reason Bay Rubber Company was formed and Mr. Poncet Davis was only a limited partner of it?

A. That is absolutely right.

Q. So that he would have no part in the management? A. That is absolutely correct.

Q. And is it not also true that the synthetic rubber contracts could not be carried on by the stockholders in dissolution, and that when the arrangements were made for the transfer of assets to Pacific Tire & Rubber Company it was similarly agreed that the synthetic rubber company contracts should go to Bay Rubber Company? [316]

A. No, that's not so.

Mr. Dinkelspiel: That is all.

I may ask one or two questions after the recess, your Honor. I assume your Honor wants to recess now?

(Testimony of George Bouchard.)

The Court: All right. Take the recess until two p.m.

(Thereupon an adjournment was taken until 2:00 o'clock p.m. this day.)

Afternoon Session, Tuesday, December 20, 1955

At 2 O'Clock

\* \* \* \* \*

Mr. Dinkelspiel: I have a few more questions of Mr. Bouchard. I want to refer Mr. Bouchard to the meeting of the Board of Directors of the Pacific Rubber Company in Exhibit 15 and the minutes dated the 21st day of May, 1951, which I think you testified to as having been seen by you when you examined the minute book in September of 1952.

A. These are the minutes.

Q. Yes. Now, you will note that the minutes begin with the words "A regular meeting." In fact, the title is, "Minutes of regular meeting of Board of Directors, Pacific Rubber Company." Did that cause you to examine the by-laws or other minutes to determine what constituted a regular meeting of the Board of Directors?

Mr. Clark: At what time; any time, Mr. Dinkelspiel? [317]

Mr. Dinkelspiel: Well, I mean at the time he ran across this when he was examining the minute book.

A. Well, I did examine the by-laws, Mr. Dinkelspiel. Now, whether I examined them on that day—maybe I did. I have examined the by-laws.

(Testimony of George Bouchard.)

Q. And the provision with respect to regular meetings as set forth in the by-laws, you examined that, did you? A. Yes, I have.

Q. Did you at that time, if you can recollect, on the 21st day of May, 1951, examine the by-laws?

A. Well, I didn't examine them on the 21st day of May of 1951.

Q. I beg your pardon. At the time when you saw the minutes of the 21st of May, 1951, which was, as I understand it, September of 1952, did you then examine the by-laws?

A. Frankly I don't believe I did on that day.

Q. I see. How long after would you say you examined the by-laws?

A. I don't think that I examined the by-laws until May of 1955 when I again had the minute book in my possession.

The Court: When, 1955? A. May of 1955.

Q. (By Mr. Dinkelspiel): By the way, when you examined the minutes of the Pacific Rubber Company did you also look at the minutes of May 18—well, I think it is the second— [318] Pardon me, your Honor.

Did you also examine the minutes entitled "Minutes of regular meeting of Board of Directors, Pacific Rubber Company," and starting, "Regular meeting of Board of Directors, Pacific Rubber Company held on the 15th day of January, 1951."?

A. I did. When I examined this book in about the first of October, 1952, I read all of the minutes in the book.



(Testimony of George Bouchard.)

Q. And you knew then that there were a set of minutes that purported to authorize the assignment to Mr. Pauley of a 10 per cent interest in the proceeds of the synthetic rubber company contracts?

A. Yes, that is one of the two things that I found that I thought was interesting.

Q. So the two things you found of interest, you say, two things of interest were the assignment of the contracts to Bay Rubber Company—that is, the Board of Directors' purported authorization, and the Board of Directors' purported authorization payment to Mr. Pauley of 10 per cent of the proceeds of those contracts?

A. Yes, sir.

Q. And those were of interest to whom?

A. Well, they were of interest to me at the time I read them.

Q. In what capacity, any legal capacity, or were you acting for anybody? [319]

A. Well, as having represented Robbins and Mr. Davis.

Q. You also represented Bay Rubber, didn't you?

A. I didn't—let's see, in October, 1952—

Q. So as not to mislead you, my examination indicates you did in January of 1952.

A. I did some work for Bay Rubber Company some time the early part of 1952.

Q. All right. Now, is it a fact that about September of 1952, within a very short time thereafter, you prepared a complaint based upon some of this information which you found in the minute book?

(Testimony of George Bouchard.)

A. No, I don't think the information in the complaint was, Mr. Dinkelspiel, as a result of what I found in the minute book.

Q. Well, I mean, when did you first prepare a complaint, either the original or a draft of the complaint which is used in this action?

A. The present action?

Q. Yes.

A. The draft of this complaint that is used in this present action was drafted in Mr. Clark's office in, I think it was May of 1953.

Q. May of 1953? A. Yes.

Q. And was filed in December of 1954? [320]

A. Correct.

Q. Now, one question I overlooked on that January 5, 1951 meeting where you testified in contradistinction to Mr. Cameron's testimony that there was no discussion with you and Mr. Cameron, or in your presence, about the assignment of these contracts, these synthetic rubber contracts; that's correct, you so testified? A. That's right.

Q. Now, was there any statement with respect to their assignment made in your presence that day by a Mr. DeSellem or in the presence of Mr. DeSellem and yourself? A. No, there was not.

Q. Now, Mr. Bouchard, I understand that you obtained—you saw these minute books in September of 1952. Now, it's true, is it not, that in or about the month of July, 1953, in behalf of a client whom I think you said was Mr. Davis, you asked for an audit of the Bay Rubber Company?

(Testimony of George Bouchard.)

A. July of '53; yes, that's correct.

Q. July or August or June of 1953.

A. It was actually made in August, but I think probably it was July we requested it.

Q. And an audit was made and an original or copy delivered to you by Clarence Bodo; is that not correct?

A. That's correct.

Q. By whom—in whose behalf did you make that demand? [321]

A. I made that in behalf of Mr. Davis.

Q. Well then, you were representing Mr. Davis when?

A. Yes, I was.

Q. That is in 1953?

A. That's right.

Q. Is it also true that later you asked for a further report and audit for the period from January 1, 1953 to October 31, 1954?

A. That's correct.

Q. And you received both those audits, did you not?

A. I did.

Q. That was also a demand made by you in behalf of Mr. Davis, was it not?

A. Yes, it was.

Q. At that time you were representing Mr. Davis?

A. Yes.

Q. They were audits of Bay Rubber Company, were they not?

A. They were.

Q. Now, you have done some work for Bay Rubber Company, have you not?

The Court: Did you say they were ordered by Bay Rubber?

Mr. Dinkelspiel: Audits of Bay Rubber.

(Testimony of George Bouchard.)

Q. You have done some work for Bay Rubber Company professionally, haven't you?

A. Yes. [322]

Mr. Clark: He has already testified he has.

Mr. Dinkelspiel: All right, it's purely preliminary.

Q. Now, isn't it a fact that one of the legal jobs you did for Bay Rubber Company and for which you receive compensation was the preparation of a partnership agreement?

A. Yes, that's correct.

Q. And what was that partnership agreement?

A. Well, it was—when Bay Rubber Company was organized in January of 1951, one of the things the partnership thought it might ultimately do was to go into the mechanical rubber goods business. At some time later, I think it was the early part of 1952, Mr. Pauley employed me to draft a proposed partnership agreement between Pacific Tire and Rubber Company and Bay Rubber Company to go into the mechanical rubber goods business.

Q. May I interrupt you a second? I am sorry—as between Bay Rubber Company and Pacific Tire and Rubber?      A. That's right.

Q. Yes. And you drafted such a partnership agreement?

A. I drafted a proposed partnership.

Q. A proposed partnership agreement?

A. That's right.

Q. You were compensated for by whom?

A. Bay Rubber Company.

(Testimony of George Bouchard.)

Q. By Bay Rubber Company? [323]

A. Yes.

Q. Now, at that time isn't it a fact that you knew that the Bay Rubber Company had, as part of its assets, the assignment of the synthetic rubber contracts?

A. I don't think so, Mr. Dinkelspiel.

Q. What other assets did it have except an interest in Pacific Tire and Rubber Company?

A. So far as I knew it didn't have any other assets, it just had the stock and debentures of Pacific Tire and Rubber Company.

The Court: Had what?

The Witness: Fifty per cent interest in the stock and debentures of Pacific Tire and Rubber Company.

Q. (By Mr. Dinkelspiel): That's all you thought it had at that time?

A. That's right.

Q. That was when you drafted a proposed partnership agreement between Pacific Tire and Rubber and Bay Rubber Company?

A. That's correct.

Q. Was there a third proposed partner in that, Inland Rubber Company?

A. I don't think so, Mr. Dinkelspiel. I think that the proposed agreement was between Pacific Tire and Rubber and Bay. It was never consummated, but I don't believe Inland was a party, at least to the draft I prepared. [324]

Q. So at that time it is your recollection that the only assets Bay Rubber Company was its notes



(Testimony of George Bouchard.)

and stock, the notes and stock of Pacific Tire and Rubber Company?

A. I think that's correct.

Q. You don't know whether it had any income then or not from any source?

A. No, I didn't. I haven't—I am not sure just what the date of that employment was.

Q. Maybe I could help you on that.

A. If you could help me.

Q. I show you what purports to be a letter on the stationery of Bouchard & Brown dated January 24, 1952, addressed to Mr. Claude Cameron, with a statement for services rendered to that law firm. [325]

\* \* \* \* \*

A. That's correct. That is my letter to Mr. Cameron and that's my bill for services, and I'm sure it was paid.

Q. (By Mr. Dinkelspiel): Having seen this, does it recollect the time—does it bring back to your mind the time when the services were rendered?

A. Yes, services were rendered on January 7, 8 and 9 of January of 1952.

Mr. Clark: I think, your Honor please, we ought to have those two sheets marked for identification only.

Mr. Dinkelspiel: I will have them——

Mr. Clark: Unless you want to put them in evidence.

Mr. Dinkelspiel: I will have them done, in the

(Testimony of George Bouchard.)

interests of saving time I will ask the witness, while I am here, Mr. Clark, the nature of the services is disclosed also, is it not? [326]

A. That is correct.

Q. (By Mr. Dinkelspiel): What is that?

A. It's drafting or proposed partnership agreement on the 7th and on the 8th, eight hours at your office, that is Mr. Cameron's office, of Messrs. Cameron, Hoffman and others, and on January 9 a meeting in the Beverly Hills Hotel with the same group. The Mr. Hoffman I referred to is the president of Mansfield.

Q. Of Mansfield? A. That's right.

Q. And also Mr. Fleming, a telephone call to Mr. Fleming in Cleveland—he is with Mansfield too,—is he is attorney or accountant?

A. Mr. Fleming is an attorney in the firm of Baker, Hostetler and Sidlow, in Cleveland.

Q. Attorneys for Mansfield?

A. That's right.

Mr. Dinkelspiel: I will have this marked for identification.

The Court: Exhibit D for identification.

(Whereupon proposed partnership agreement was marked Defendant's Exhibit D for identification.)

Q. (By Mr. Dinkelspiel): Does the fact of the communication with the law firm of Baker, Hostetler and Fleming, is it—or Baker and Hostetler, is it? [327]

A. Baker, Hostetler and Sidlow.

(Testimony of George Bouchard.)

Q. And with Mr. Fleming indicate to you whether or not Mansfield were a party to the partnership, or involved in it?

A. Yes, I am sure it was. Mr. Fleming is one of the tax counsel in that firm, and that was what we were talking about.

Q. Yes. And there were some tax problems involved in the formation of this partnership?

A. Well, Mansfield wanted to be sure that there were none that were overlooked.

Q. Just, Mr. Bouchard, and without any attempts to suggest any misstatements on your part, but if there were tax consequences involved in what was doing, proposed to be done, wasn't it something you felt necessary to know what the income was of the client you represented in that partnership setup?

A. Stated as you do you would think the answer would be yes, but——

Q. I had that in mind.

A. Yes. But that wasn't a problem on our side, it was just a question on Inland's side, or Mansfield, whichever it was.

Q. One last question. In behalf of Mr. Davis or the Robbins Tire and Rubber Company have you made demand to set aside the transfers of those two synthetic rubber company contracts from Pacific to Bay Rubber?

A. Will you state that—may I have that again, Mr. Reporter?

(Record read.) [328]

(Testimony of George Bouchard.)

A. None other than this action.

Q. (By Mr. Dinkelspiel): None other than this action?

A. That is correct.

Q. That would be your testimony with respect to anybody—nobody has made any demand except by this action?

A. Not to my knowledge, no. \* \* \* \* \*

### Redirect Examination

Mr. Clark: May it please the Court.

Q. On cross examination by Mr. Dinkelspiel you were asked about a statement in Exhibit No. 29 relating to the 10 per cent interest in Bay Rubber Company, it was to be set aside for officials and directors and nominees in Mansfield, and you replied that you knew what that was for. What was it for?

Mr. Hedges: It was in reference to Minnesota, counsel; you said Mansfield.

Mr. Clark: That's a misstatement. I am sorry, Minnesota Mining and Milling Company.

The Witness: And it's 8 per cent and not 10.

Q. (By Mr. Clark): That's right.

A. Yes. At the time Bay Rubber Company was formed it was talked about and there was some contemplation that Bay Rubber Company would go into the mechanical rubber goods business. [329]

Q. Is that different from the synthetic rubber business?

A. Oh, yes, yes.

Q. All right.

A. And Mr. Pauley and Mr. Davis thought it

(Testimony of George Bouchard.)

would be advisable to set aside an interest, which they decided on at 8 per cent, for the officers and directors and officials of Minnesota Mining Company to create in them and have their good will and perhaps knowhow if they went into that business out here on the coast.

Q. Why did they want the knowhow of those officers?

Mr. Hedges: Calls for the conclusion of this witness.

Q. (By Mr. Clark): If you know.

A. Well, I could only surmise that, Mr. Clark; Bay Rubber didn't have any knowhow of their own.

Q. You don't know what business Minnesota Mining and Milling had?

A. Yes, they are in—making Scotch tape and other mechanical——

Q. Is that a mechanical rubber business also?

A. I understand so, yes.

The Court: Is that the only reason you were told 8 per cent was to be given to these officers?

The Witness: Only reason I know of given, yes, your Honor.

Mr. Dinkelspiel: May we have the time and place, please, [330] when this information was given to this witness?

A. Yes, on the day that that document was signed, on January 7, I think it is, 1951.

Mr. Clark: That's correct.

Q. In response to a question of Mr. Dinkelspiel's, you stated that you found two things in the



(Testimony of George Bouchard.)

minute books of interest. You have, as a result of the further cross examination, told what those two things were of interest to you in the minute book of Pacific Rubber Company?

A. I think I have, yes.

Q. Yes. You were also asked—I have forgotten now the question was phrased, but your response was that there was a conversation among Pauley, Davis and yourself in Pauley's office in Los Angeles which resulted in the signing of some instrument by Mr. Davis. That was the partnership agreement that was signed, was it not? Tell us what that conversation was, where it occurred, who was present, and when.

A. It occurred on the morning of January 7, 1951, in Mr. Pauley's office, and the only persons who were present were Mr. Pauley, Mr. Davis and myself. I had told Mr. Pauley that I had advised Mr. Davis not to sign the agreement, but I didn't know what he was going to do about it. And we were there, I suppose, in Mr. Pauley's office, for a good part of an hour, at least, and Mr. Pauley talked to Mr. Davis about what he thought about this agreement and what he intended to do. [331] Do you want me to tell the conversation?

Mr. Clark: Yes, the substance of it.

A. The substance of it was Mr. Davis was not going to sign it.

The Court: Substance of what?

Mr. Clark: The conversation.

The Witness: Well, Mr. Davis was not going

(Testimony of George Bouchard.)

to sign it, and the conversation and substance was this: if this is what your Honor wants, or Mr. Clark wants. Mr. Pauley told Mr. Davis—is that the answer to your question, you want the conversation?

Q. (By Mr. Clark): Yes, the substance of it, if you can't remember what was said.

A. Mr. Pauley told Mr. Davis that he, Pauley, and Davis had been in a great many deals together, that they had always got along all right and had no difficulties and he didn't expect any difficulties would arise in this situation because of Mr. Davis' position as a limited partner. He told Mr. Davis that he intended to consult him on every matter of policy affecting Bay Rubber Company or the operation of the Pacific Tire and Rubber Company.

He also told Mr. Davis that he thought going into this deal with Mansfield would be a very profitable deal and that it would at least double the capacity of the Oakland plant.

That, in substance was the conversation, and Mr. Davis finally signed the agreement. [332]

Q. You were asked about Hayes as trustee holding an interest in Bay Rubber Co. Do you know for whom Hayes held and holds that interest? Four per cent interest, was it not? Do you know for whom?     A. I know now for whom.

Q. All right; for whom?

A. He holds one per cent for Mr. Clark Cameron and the other three of the four per cent is held for Mr. Pauley's children.

(Testimony of George Bouchard.)

Q. You were asked a great many questions about your examination of the minutes of the Pacific Rubber Company in September or October 1952, and you mentioned that you had had the minutes again in May 1955, of Pacific Rubber Company. When you examined them in September or October, whichever month it was, 1952, was there anything in the form of those minutes that seemed unusual to you or attracted your attention?

A. No, sir.

Q. When you examined those—where did you get them in May of 1955? From whom?

A. I got them from Mr. Hedges.

Q. In Los Angeles? A. Yes.

Q. When you examined the minutes in May 1955, was there anything in the form of them which attracted your attention at that time? [333]

A. There was.

Q. What was it?

A. It was in the minutes of May or December 28th, 1948, the original minutes.

Mr. Dinkelspiel: The only suggestion I can make in this matter, your Honor, is the witness has already testified that he could not testify as to any differences in the minute book between the time he saw the minutes in 1952 and the present time.

\* \* \* \* \*

Q. (By Mr. Clark): Go ahead and answer the question.

A. Yes, when I examined the minute book in May of this [334] year and read the minutes of

(Testimony of George Bouchard.)

the first meeting, I thought I noticed a very substantial difference between the typewriting on the first four pages and the typewriting on the last four pages.

Q. Did you do anything with respect to that?

A. I did.

Q. What? What did you do?

A. I took the book over to Mr. Clark Sellers.

Q. Who is Clark Sellers?

A. He is an examiner of questioned documents in the city of Los Angeles — and asked him to make an examination of this minute book. [335]

Mr. Clark: While Counsel is looking at that letter, if your Honor please——

Q. You testified on cross examination that you did not recollect more than a very few instances representing Mr. Davis as distinguished from Robbins Tire and Rubber Company. You were a member for a while of the Board of Directors of Pacific Tire and Rubber Company, were you not?

A. I was.

Q. And did you represent anybody while you were such member?

A. Yes, I was representing Mr. Davis as member of that board.

\* \* \* \* \*

The Court: Plaintiff's Exhibit 30 for identification.

(Whereupon letter dated November 19, 1954, [336] Bouchard to Pauley, was marked for identification Plaintiff's Exhibit No. 30.)

(Testimony of George Bouchard.)

Mr. Clark (Handing witness Exhibit 30): State whether or not that refreshes your recollection on the question whether you wrote any letters threatening litigation.

Mr. Dinkelspiel: That wasn't the question I asked him. O.K. I make no objection.

Mr. Clark: That is pretty close to it, I think.

A. Yes, I wrote that letter.

Mr. Clark: We offer it in evidence.

Mr. Dinkelspiel: I have no objection. It serves no purpose but I am not going to object.

The Court: All right, it will be admitted.

(Whereupon letter previously marked for identification was received in evidence as Plaintiff's Exhibit No. 30.)

PLAINTIFF'S EXHIBIT No. 30

Bouchard & Little

Lawyers

Suite 900 Statler Center

900 Wilshire Boulevard

Los Angeles 17

November 19, 1954

Messrs. Edwin W. Pauley

Claude Cameron, General Partners

Bay Rubber Company

717 North Highland Avenue

Hollywood 38, California

Gentlemen:

Robbins Tire and Rubber Company has authorized me to commence suit against you and the part-



ners of Bay Rubber Company for breach of trust, accounting and wrongful conversion of assets belonging to Robbins as a stockholder of Pacific Rubber Company, which was dissolved and liquidated on or about January 10, 1951.

I refer particularly to an asset of Pacific Rubber Company represented by two agreements, one dated August 28, 1950, between Reconstruction Finance Corporation on the one hand and Pacific Rubber Company and Minnesota Mining and Manufacturing Company on the other hand, providing for the operation by Minnesota Mining and Manufacturing Company of a synthetic rubber plant located at Torrance, California, and one dated September 20, 1950, between Minnesota Mining and Manufacturing Company and Pacific Rubber Company. These assets had a value at date of liquidation of not less than \$1,000,000, of which Robbins Tire and Rubber Company owned 41.403% and John Condrey owned 58.597%.

The complaint in this matter will be filed at the end of five days from the date of this letter, unless within that time you indicate to me a desire to discuss a possible settlement of the issues involved.

Very truly yours,

/s/ George Bouchard.

GB:ba

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#### Recross Examination

Q. (By Mr. Dinkelspiel): I think your prior testimony was—if I don't misquote you—that you

(Testimony of George Bouchard.)

had not nor anyone to your knowledge on behalf of Mr. Davis or Robbins Tire and Rubber Company made any demand upon Pacific Rubber Company to set aside the proposed transfers of the synthetic rubber contracts to Bay Rubber Company.

A. That's right.

Q. You said you knew of no such demands?

A. That's right.

Q. And your testimony is the same now?

A. Yes. You mean prior to what time, Mr. Dinkelspiel?

Q. Well, you said prior to the filing of suit. Now, if you want to correct that, go ahead.

A. Well, I wrote that letter advising him a suit was in contemplation.

Q. Well, apart from that letter, and whatever the contents of that letter may disclose, there was no other demands of the kind I have asked you about?

A. Well,—

Q. Is there something that refreshes your recollection since I asked you in the first instance?

A. I am not just sure what you mean by the scope of the question, Mr. Dinkelspiel. [338]

\* \* \* \* \*

Q. (By Mr. Dinkelspiel): Now, Mr. Bouchard, you mentioned something about representing Mr. Davis on the board of the Pacific Tire & Rubber Company.

A. That's right.

Q. Now, is it not a fact that while you so represented Mr. Davis on the board you actually brought suit against the Pacific Tire & Rubber

(Testimony of George Bouchard.)

Company as attorney of record to foreclose certain properties the subject of promissory notes?

A. No. I resigned before that suit was filed.

Q. You resigned one week after the suit was filed, didn't you, Mr. Bouchard?

A. I don't think so, Mr. Dinkelspiel. It may have been a week later; I don't know. I am not certain of the date of resignation.

Q. And at that time, anyway, you were representing Mr. Davis on the board and you brought suit in behalf of Robbins Tire & Rubber against the same company?

A. I brought suit against the Pacific Tire to foreclose the mortgage.

Q. In behalf of Robbins Tire & Rubber Company?

A. Yes, Mr.—yes, my name appears as attorney of record.

Q. And I also understood you to testify in response to your counsel's questioning that the reason why a reservation was made in favor of directors or employees of [339] Minnesota Mining & Manufacturing Company in the setup of the interest of Bay Rubber Co. was that because Bay Rubber Co. was contemplating going into what kind of rubber business?

A. Mechanical.

Q. Mechanical rubber business. A. Yes.

Q. Mechanical rubber business and they wanted to get some help from Minnesota Mining & Manufacturing Company? A. Yes.

(Testimony of George Bouchard.)

Q. Who said that and who was present and when was that said?

A. Well, it was said on January 7, 1951 and it was said by Mr. Pauley in the presence of Mr. Davis and myself. Now, whether it was discussed by others I am not sure.

Q. Was anybody else present? Just you and Mr. Davis and Mr. Pauley?

A. I remember that very distinctly. Of course there were several people there in the office. Mr. Hedges was there, Mr. Bryan and Mr.—Mr. Bryan from Mansfield and——

Q. Whose office was this is?

A. Well, the one that I remember distinctly was in Mr. Pauley's office.

Q. I see. Now, this was signed about the 7th day of January 1951.

A. It was that day.

Q. Now, at that time do you know whether Pacific Rubber Company [341] had any interest with Minnesota Mining & Manufacturing Company?

A. Yes, they did.

Q. As illustrated by agreement 5-A, agreement 5, and agreement 6; isn't that right?

A. Yes, sir. Correct.

Q. Do you know of any other business arrangements they had at that time, Pacific Rubber Company had at that time with Minnesota Mining & Manufacturing Company?

A. None to my knowledge.

Q. None to your knowledge?

A. No, sir.

(Testimony of George Bouchard.)

Q. Now, actually the partnership agreement was amended on December 28, 1951; isn't that correct?

A. Yes.

Q. And at that time Mr. Hayes acquired individually a four per cent interest in the partnership, in addition to that which he acquired as trustee?

A. Yes.

Q. And there was at that time no other business with Minnesota Mining & Manufacturing Company than these synthetic rubber contracts, was there?

A. Not to my knowledge, no.

Q. One other question, and I should have asked it on direct examination: Do you know for whom, if anybody, Mr. Davis was [341] acting as trustee when he signed the partnership agreement of the Rubber Company as trustee?

A. Yes.

Q. Who? A. His children.

Q. You are sure of that?

A. Well, I am sure that's what he said.

Q. Did you read his deposition given in this case?

A. Yes, I know he did not create—

The Court: What?

Q. (By Mr. Dinkelspiel): Did he deny he was trustee for anybody?

A. Well, I didn't think he denied that. I think what he said, if I recall, was that he had not created a trust for the children.

Mr. Dinkelspiel: That's all, your Honor.

Mr. Clark: No questions.